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IN THE

SUPREME COURT
OF THE
UNITED STATES.

October Term, 1936
No. 456.

Ray Ingels, as Director of the Motor Vehicle Department of the State of California; Howard E. Deems, as Registrar of the Motor Vehicle Department of the State of California; John C. Corbett, Fred E. Stewart, R. E. Collins, Ray Edgar, and Ray Riley, as members of the State Board of Equalization and constituting said board in the State of California; and E. Seymour,

Appellants,

vs.

Howard Morf, doing business under the firm name and style of Pacific Wholesale Automobile Company; United States Fidelity and Guaranty Company, a corporation; and Continental Casualty Company, a corporation,

Appellees.

BRIEF OF APPELLEES WITH APPENDIX.

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Howard Morf, doing business under the firm name and style of Pacific Wholesale Automobile Company; United States Fidelity and Guaranty Company, a corporation; and Continental Casualty Company, a corporation,

Appellees.

BRIEF OF APPELLEES WITH APPENDIX.

OPINION BELOW.

The opinion of the District Court is reported in 14 Federal Supplement 922. [R. 76.]

APPELLEES' STATEMENT OF THE CASE.

Appellees cannot adopt the appellants' statement of the case in its entirety, and must take exception to so many portions thereof, that they deem it advisable to present their own statement rather than attempt to specifically differentiate from appellants' statement.

Appellees in this case are Howard Morf, doing business under the firm name and style of Pacific Wholesale Automobile Company, United States Fidelity and Guaranty Company, and Continental Casualty Company, corporations. The two last named appear here solely because they are sureties on the bonds posted by appellee, Howard Morf; therefore when the designation "Appellee" appears in this brief, we shall mean the appellee, Howard Morf.

APPELLEES' STATEMENT OF THE FACTS.

Appellee is engaged in the business of buying and selling cars at wholesale only, in the city of Los Angeles, California. He purchases automobiles in other parts of the country and brings them to his place of business in Los Angeles, having been so engaged since 1928 or 1929. [R. 60, 61.]

In September, 1935, appellee purchased a 1934 Dodge sedan car in the state of Texas. Immediately thereafter said car was driven to the border line of California, near Blythe, California. [R. 5, 39.] Said car was driven singly, not in company with any other car, and not in caravan, procession or fleet. [R. 5, 39, 77.] Appellants demanded of appellee the sum of $15 before they would allow said car to enter California. [R. 5.] Appellants

based their demand on the provisions of Chapter 402, Statutes of 1935, of California, page 1453. [R. 10 *et seq.* Appendix B.]

The fact is, and the evidence shows, that approximately 30% to 40% of the cars imported by appellee are driven into California alone, as a single unit, without having a car attached thereto, and not in company with any other cars coming into California. [R. 60.] Appellants demand the sum of $15 for each of these vehicles as above set forth.

In September, 1935, appellee also purchased a 1935 Dodge sedan car in the state of Louisiana, and a 1934 Oldsmobile coupe car in the state of Texas. Immediately thereupon said cars were driven by appellee to the border line of California near Blythe, California. The Oldsmobile coupe was towed, being attached to the rear of the Dodge sedan. Said cars were driven as a unit, not in company with any other cars, and not in group, procession or fleet. [R. 5.] Appellants demanded of appellee the sum of $30 for said vehicles before they would allow them to be imported into California, basing their demand on Chapter 402, Statutes of 1935, of California, page 1453. [Appendix B.]

Not over 60% to 70% of the cars imported by appellee are in groups or fleets, as distinguished from the single non-group car movements above referred to. [R. 60, 62.]

The cars are operated directly under appellee's supervision and responsibility and not under contract [R. 61], and are driven by persons in appellee's employ. [R. 62.] Appellee does no radio or newspaper advertising for any individuals to drive cars. [R. 61.]

When the cars are imported in caravans, the average number of cars is 12. The buyer, or manager, and a "trouble-shooter", who attends to the mechanical condition of the cars, always drive single cars, which single cars are not counted or included in the 30% to 40% of single cars imported by appellee and which latter cars are not in company with any other vehicle, and not in group, processsion or fleet. [R. 62.]

Appellee imported into the state of California, between January 1st, 1935, and November 29th, 1935, approximately 3,000 cars. [R. 63.] He imports only his own motor vehicles, and is not engaged in transporting the vehicles of others or any property or persons for hire. [R. 62, 63.] His average net profit on each car ranges from $10 to $15 [R. 61], hence the profit on each car is equal to, or less than, the tax sought to be imposed by the act here in question.

From January 1st, 1935 to November 29th, 1935 (the date of trial) approximately 14,000 cars were imported into the state. [R. 58.]

All cars purchased by appellee are brought to his place of business in Los Angeles and thereafter he sells or trades all of them. He sells them to various dealers in the state of California, and does a nice business in San Francisco, San Diego, Riverside, San Bernardino, Bakersfield, Fresno, and all points of the state, and in Seattle, Washington and Portland, Oregon. About one-half of the automobiles imported by appellee are sold to dealers located outside the city of Los Angeles, who come to appellee's place of business and buy these automobiles, and drive them away, on their own wheels, for the purpose of sale. [R. 60, 61.]

When one automobile is attached to another, tow-bars and safety chains are used. There is no particular hazard in driving an automobile with another towed to it. [R. 61.] As to any possible traffic hazards created by the movement of the cars which appellee imports into California the appellee, Morf, testified that he had ridden in one of these automobiles which was towing another and had stopped the front car, and that he had had no difficulty in driving an automobile with another towed to it nor had he noticed any particular hazard in so driving [R. 61]; also he has actually caravaned cars from eastern points and has personally taken charge of bringing them through; that he has observed groups of cars being driven into California and there has been nothing in the method or manner of such driving that would create a traffic hazard. It has not proven hazardous to him and his cars have not been involved in any accidents, nor have any of his drivers been arrested. [R. 52.]

Appellants' witness Dillon, a California highway patrolman for 8½ years, testified that he has observed some violations of the California Vehicle Act by the drivers of cars being driven *in groups or caravans.* None of the violations mentioned, however, are any different than the usual and ordinary violations commonly perpetrated by the ordinary motorist driving a car in California, or into California, the entry of which is not for the purpose of sale. [R. 51.]

Appellants' witness Walsh, a California highway patrolman for 5 years, and patrolling a portion of the same

highway as patrolled by the witness, Dillon, testified that *"on one or two occasions"* while going to his office, he had come in contact with *group or caravan* movement of cars. [R. 47.] He had not noticed any accidents by reason of these group or caravan cars, relative to private cars. [R. 49.] He had never issued any citations to these drivers for violations of the traffic laws. [R. 48.] In every instance there is a man in charge of group movements who is a resident of the state of California. [R. 49.] There would be no more danger or hazard in bringing a single car into California for the purpose of sale, than for any other purpose. [R. 50.] The California Vehicle Code provides for safety chains between cars, and this is a recognized standard principle for towing vehicles in California, and it is permissible and lawful. [R. 50.] If cars were towed together in the same manner, *i. e.*, by tow-bar or safety chains, wholly within the state, they would react in exactly the same manner as cars towed from without to within the state. [R. 50.] The witness testified that he did not know how many cars, single, without any cars attached to them, traverse his beat in any single day and that he would have no particular occasion to know that such cars were brought into California for the purpose of sale. [R. 49, 50.]

Appellants' witness, Cato, chief of the California Highway Patrol, testified that the fleet movement, where made up of more than 4 or 5 cars, constitutes a hazard and causes certain traffic difficulties. [R. 56.] (The group movement of four cars or less does not create a hazard.)

Approximately six additional men were put on over the whole state because there were group movements of cars on the roads. If the caravaning business were entirely eliminated, these men could be dispensed with on routes they now patrol, but *their services would not be dispensed with,* and they would be moved to other locations to work. They get a salary of $170 per month. [R. 53.]

There is caravaning of cars on their own wheels for the purpose of sale, intrastate, within the state of California. [R. 54, 58, 61.]

The Legislature of California intended to stop caravaning altogether, not regulate it, because it was bringing itinerants into the state, and this was the real object in enacting the Caravan Act. [R. 55.]

The appellants' witness Martland testified that he told the Legislative Committee:

> "That California automobile plants employed several thousand men and that caravaning, from an economic standpoint, was very definitely a threat to local employment, in addition to which it was bringing in a number of transients." [R. 57.]

Also:

> "The purpose was to reduce caravaning by regulating it, as that would have been the probable effect." [R. 57.]

Further:

> "When the bill was first discussed, the fee was $50.00 and later cut to $15.00." [R. 57.]

THE ISSUES.

The issues in this case are clearly defined. They are:

I.

When appellee, in the month of September, 1935, purchased, in the state of Texas, a 1934 Dodge sedan car, bearing 1935 Texas license plates No. 865530, and brought said car to the state line of California, alone, and not in company with any other car, and attempted to bring said car into California on its own wheels for the purpose of sale, and when appellants did then and there demand of appellee a tax of $15.00 before permitting appellee to bring said car into California, and did further demand that appellee comply with all other provisions of Chapter 402 of the Statutes of 1935 of the state of California, and did further threaten to make like demands in the future with respect to all other cars which appellee may seek to import into California in like manner, were such demands and threats of future demands violative of appellee's rights under

(A) The "Commerce Clause" of Article I, Section 8, of the Constitution of the United States?

(B) The "Equal Protection" and "Due Process of Law" clauses of the Fourteenth Amendment of the Constitution of the United States?

II.

When, in the month of September, 1935, appellee purchased, in the state of Louisiana, a 1935 Dodge sedan car, bearing 1935 Louisiana license plates No. 108946, and purchased a 1934 Oldsmobile coupe car in the state of Texas, bearing 1935 Texas license plates No. 869642, and brought said cars to the state line of California in tandem, *i. e.,* the Dodge sedan towing the Oldsmobile coupe, and which cars were alone, and not in company with any other cars, and attempted to bring said cars

into California, in such manner, on their own wheels, for the purpose of sale, and when appellants did then and there demand of appellee a tax of $30.00 before permitting appellee to bring said cars into California, and did further demand that appellee comply with all other provisions of Chapter 402 of the Statutes of 1935 of the state of California, and did further threaten to make like demand in the future in respect to all other cars which appellee may seek to import into California in like manner, were such demands and threats of future demands violative of appellee's rights under:

(A) The "Commerce Clause" of Article I, Section 8, of the Constitution of the United States?

(B) The "Equal Protection" and "Due Process of Law" clauses of the Fourteenth Amendment to the Constitution of the United States?

III.

When appellee purchases cars in states other than California, and seeks to import them into California, in fleet or group movements, on their own wheels, for the purpose of sale, and when appellants demand of appellee a tax of $15.00 for each of said cars in said group or fleet, before permitting appellee to bring said cars into California, and further demand that appellee comply with all other provisions of Chapter 402, of the Statutes of 1935 of the state of California, and further threaten to make like demands in the future with respect to all other cars which appellee may seek to import into California in like manner, were such demands and threats of future demands violative of appellee's rights under:

(A) The "Commerce Clause" of Article I, Section 8, of the Constitution of the United States?

(B) The "Equal Protection" and "Due Process of Law" clauses of the Fourteenth Amendment to the Constitution of the United States?

SUMMARY OF THE ARGUMENT.

I.

The District Court's findings should be sustained.

II.

Chapter 402 discriminates against interstate commerce, and denies appellee the equal protection of the law.

A. The attempted exaction by appellants from appellee of a tax of $15.00, as provided in Chapter 402, before permitting appellee to transport into the state of California, a single car, alone, and not in company with any other car, upon its own wheels and for the purpose of sale, violates appellee's rights under the Commerce Clause of Article I, Section 8, and the Equal Protection and Due Process clauses of the Fourteenth Amendment to the Constitution of the United States.

A-1. The Caravan Act discriminates against appellee, who drives his cars singly into California for the purpose of sale, and in favor of other persons: (a) Who drive cars singly from without to within California for purposes other than sale, and, (b) Who drive cars singly, wholly within California, for purposes other than sale.

A-2. The Caravan Act discriminates against appellee in the interstate importation of his singly driven cars, not in fleet, in favor of singly driven cars moving wholly intrastate, in like manner and for the purpose of sale.

B. The attempted exaction by appellants from appellee, of a tax of $30.00, as provided in Chapter 402, be-

fore permitting appellee to transport into California two automobiles, one in tow of another, not in company with any other automobiles, upon their own wheels, and for the purpose of sale, violates appellee's rights under the Commerce Clause, Article I, Section 8, and the Equal Protection and Due Process clauses of the Fourteenth Amendment to the Constitution of the United States.

C. The attempted exaction from appellee of a tax of $15.00, as provided in Chapter 402, when he seeks to import cars into California, in fleet or group movements, on their own wheels for the purpose of sale, violates appellee's rights under the Commerce Clause of Article I, Section 8, and the Equal Protection and Due Process clauses of the Fourteenth Amendment to the Constitution of the United States.

III.

The tax of $15.00, exacted by Chapter 402, is arbitrary, excessive, and an unconstitutional burden upon appellee's interstate commerce, and discriminates against him.

A. The $15.00 tax is not levied as compensation for the use, maintenance or construction of the highways.

IV.

The California Highway Carriers' Act does not apply to appellee.

V.

The $15.00 tax required under Chapter 402 is an import tax.

VI.

Authorities.

ARGUMENT.

I.

The District Court's Findings of Fact Should Not Be Disturbed.

Where there is any evidence to sustain a finding of fact, which has been found by the trial court, this Court will not disturb it on appeal.

In the case of *Doolcy v. Pease,* 180 U. S. 126, 131, this Court said:

> "Where a case is tried by the court, a jury having been waived, its findings upon questions of fact are conclusive in the courts of review, it matters not how convincing the argument that upon the evidence the findings should have been different. Stanley v. Albany County Supers., 121 U. S. 547, 30 L. Ed. 1002, 7 Sup. Ct. Rep. 1234.
>
> "Errors alleged in the findings of the court are not subject to revision by the Circuit Court of Appeals or by this court, if there was any evidence upon which such findings could be made. Hathaway v. First Nat. Bank, 134 U. S. 498, 38 L. Ed. 1006, 10 Sup. Ct. Rep. 608; St. Louis v. Rutz, 138 U. S. 241, 34 L. Ed. 946, 11 Sup. Ct. Rep. 337; Runkle v. Burnham, 153 U. S. 225, 38 L. Ed. 697, 14 Sup. Ct. Rep. 837."

The Supreme Court of California, in the case of *Hotaling v. Hotaling,* 193 Cal. 368, 224 Pac. 455, 56 A. L. R. 734, said:

> "Appellants contend that the findings of fact are inconsistent and conflicting and they specify a large number of instances of alleged inconsistencies therein. The great majority of the claimed inconsisten-

cies were solely in appellants' theory as to the legal effect which should be given to particular facts found. The findings are detailed and voluminous and in many respects are susceptible to a construction which would give rise to inconsistencies therein. It is the duty of an appellate court in reviewing the findings to give them a liberal construction so as to uphold rather than defeat the judgment. All the findings are to be read together and must be reconciled to prevent any conflict upon material points, if such reconciliation is possible."

At 4 *Corpus Juris,* page 857, it is said:

"Where the evidence is conflicting, the appellate court, in determining whether the evidence is sufficient to support a verdict, must assume that the evidence in favor of the successful party is true, leave out of consideration entirely evidence of the unsuccessful party in conflict therewith, and give to the evidence of the successful party every favorable inference which may be reasonably and fairly drawn from it." (Citing cases.)

We now consider the findings in consecutive order.

FINDINGS OF FACT NOS. 1, 2 and 3 [R. 34].

These findings are not disputed.

FINDING OF FACT NO. 4 [R. 34].

Appellants object to this finding on the sole ground that it is an argumentative proposition of law. We see no reason for extended argument on this point, as a mere reading of this finding negatives such contention. In our opinion, this finding was both necessary and proper to the decision of the trial court, and completely dispels the con-

tention of appellants made throughout this entire case, that the passage of the so-called Caravan Act (Chapter 402, Statutes of 1935) was necessary to prevent the importation of stolen automobiles into the state of California. An examination of all of the acts of the Legislature included in this finding readily discloses that Section 11o.5 of the Vehicle Code [Appendix C] was directed specifically at the problem of stolen cars being imported into the state of California.

FINDING OF FACT NO. 5 [R. 35 *et seq.*]

Not disputed.

FINDING OF FACT NO. 6 [R. 37]

Appellants' objection to this finding is that it is an argumentative proposition of law. The term "caravan" as applied to and used in the act is truly a misnomer, which fact may be readily ascertained from a reading thereof. This is particularly true when applied to a single car. The finding seems to be amply sustained by Webster's New International Dictionary; see "Caravan."

FINDING OF FACT NO. 7 [R. 37 *et seq.*].

Appellants object to this finding on the ground that it is an argumentative proposition of law.

We see nothing argumentative in this finding and think it should not be disturbed. The distinction made by this finding is important to the decision because it definitely holds that the so-called Caravan Act is not limited to fleet movements; especially so since the Court rightfully finds that "a tax upon such a single car movement, not in group or fleet, is one of the specific complaints in this

case." [R. 5, 66, and see Stipulation, Appendix A.] The balance of the finding is merely a factual statement of some of the provisions contained in the statute, and as such is unobjectionable.

FINDING OF FACT NO. 8 [R. 38].

Appellants' treatment of this finding [Br. 7 and 8; R. 23, 24] is a typical example of the unfairness of appellants in stating the evidence in this case. In the first place, in their exceptions to the 8th finding [R. 24] appellants except to said finding on the ground that it is not supported by the evidence (which is not true) and, upon the further ground that the evidence shows that the movement of a single vehicle as therein described, and the movement of all vehicles, included within the definition of caravaning, does present unusual police problems (also not true). Appellants changed their minds, however, when they treated this finding, together with others, in their brief to this Court. (Br. 7.) We quote:

> "As to such findings, however, the evidence is that substantially all of the vehicles brought into the State on their own wheels for purpose of sale are in fleets or caravans of 8 to 50 cars, [R. 47, 51, 56, 60, 62, 63.]"

Appellants found that they could not sustain the exception to the 8th finding from any part of the record, because the record is replete with evidence supporting said finding and because all of the evidence upon the point distinctly bears out the fact that the movement of a single vehicle does not present unusual police problems. Finding the evidence in such a state, appellants then seek

to escape this point by telling this Court that "substantially all of the vehicles brought into the state on their own wheels for purpose of sale are in fleets or caravans of 8 to 50 cars." This statement by appellants is positively not true. The trial court did not think that it was true, and the evidence most certainly does not bear out appellants' statement. Appellee testified that 30% to 40% of the automobiles imported by him were brought into the state on their own wheels, singly, and not in company with any other vehicle. [R. 60.] Appellants quote, in substantiation of their proposition, R. 47, 51, 56, 60, 62, 63. Let us examine these references. There is nothing on R. 47 that refers to appellants' statement, except that the witness Walsh says on the "one or two occasions" that he has come in contact with caravan cars there were approximately 10 to 40 cars in a caravan. There is nothing on R. 51 to support appellant's position, except that the witness Dillon testified that he has come in contact with the caravaning of automobiles and that the average number of cars in a caravan is "from 8 to 30 or 35 cars." There is nothing on R. 56 to substantiate appellants' claim, except that the witness Martland stated "the new cars, for the most part, run in caravans ranging from 10 to as high as 50 automobiles." There is nothing on R. 60 which substantiates appellants' claim but on the other hand on said page appears the testimony of appellee Morf, who directly testifies as follows:

> "In the operation of my business approximately 30 percent to 40 percent of the automobiles are driven into the State of California alone, as a single unit, with one driver driving an automobile, and the balance are brought into this state with one automobile towing another.

> "When I speak of bringing cars in, and 30 percent or 40 percent being single cars without having a car attached thereto I mean that such car comes through alone, without any regard to any other cars coming into California."

There is nothing on R. 62 to substantiate appellants' claim. This whole page is a portion of appellee Morf's testimony, and the only possible connection would be in his statement that: "In caravans the average number of cars is 12." There is nothing on R. 63 to sustain appellants' claim. This, too, is appellee Morf's testimony and has no connection with appellants' statement unless it be his testimony that "the average number of cars in a caravan is about 12."

Thus it will be seen that out of six references to the evidence which appellant presents to this Court to show this Court that, "the evidence is that substantially all of the vehicles brought into the state on their own wheels for the purpose of sale are in fleets or caravans of 8 to 50 cars," the only reference which refers materially to this point at all is the reference to page 60 of the record where appellee Morf definitely testifies the exact opposite, to-wit: that 30 to 40 percent of the automobiles imported by him into the state are driven in alone, as a single unit, with one driver driving an automobile and not in company with any other automobile.

FINDING OF FACT No. 9 [R. 38].

Appellants' objection to this finding is that it is contrary to the evidence.

Appellants' treatment of this finding is practically the same as that of finding No. 8. This finding is to the ef-

fect that the fleet movement, where made up of more than four automobiles, causes certain traffic difficulties, which are enumerated in said finding. It states, however, that these difficulties, as enumerated, are exceptions rather than the rule. Appellants contend, however, that "the evidence specifically shows that a caravan of four or more cars is a definite highway hazard [R. 55, 56], that law violation and unusual hazard is the rule in the operation of caravans and that a caravan as to which the contrary is true is an unusual and glowing exception. [R. 49.]"

Appellants, with the same disregard of accuracy as occurred with respect to finding No. 8, have again proceeded to distort the evidence.

There is nothing at R. 55 or 56 which supports appellants' sweeping statement above quoted. The testimony of the witness Cato, Chief of the California Highway Patrol, at R. 55, contains no statement of any "law violation" or "unusual hazard" by reason of the operation of caravans. He does state, however, that "the pick-up in business and new automobiles being faster and more modern are contributory causes to increased hazards on the highways, not alone on the highways where caravans come in, but on all highways; also, the increase in hauling, trucks, et cetera. All this has considerable to do with it. I have observed, when out on the road, big oil trucks and various other types of commercial vehicles that had trailers behind them." [R. 55.] In other words, the witness Cato himself does not say that "law violation" and "unusual hazard" is a rule, but merely that caravans of more than four automobiles have a tendency, along with other factors, to increase the hazard. Nowhere in the record does any witness testify that the caravaning of

more than four vehicles creates an "unusual hazard," nor does any witness even use said phrase.

On the other hand, there is ample evidence to sustain the finding. The appellee Morf testified:

> "I have been driving automobiles into the State of California for approximately three years, and during that time, none of my cars have ever been in an accident, nor have any of my drivers ever been arrested."

This, considering the number of automobiles imported by appellee, is eloquent of the fact that any hazard which may be created by reason of the fleet movement of more than four automobiles into the state, forms the exception, and not the rule, and amply supports the foregoing finding. Appellants have attempted to mould a few isolated instances into a broad general condition. To this effort, the District Court's answer was a finding to the contrary.

FINDING OF FACT NO. 10 [R. 38].

Not disputed.

FINDING OF FACT NO. 11 [R. 38].

Appellants' exception [R. 25] to the 11th finding is on the ground that "plaintiff's bill of complaint and the evidence show that plaintiff's occupation is principally that of transporting used motor vehicles from points where the market price is low to California where the market price is high; that such transportation is the entire basis of plaintiff's business, that the evidence shows that once plaintiff's cars arrive in California they are quickly and easily disposed of, and that the sale of such cars in Cali-

fornia is only a minor and incidental part of plaintiff's business." Appellee defies appellants to point out any portion of the record which will sustain such exceptions. To the contrary, the finding is amply supported by the evidence. [R. 60, 61, 62.]

FINDINGS OF FACT NOS. 12 AND 13 [R. 38 *et seq.*].

These findings not disputed.

FINDING OF FACT NO. 14 [R. 30].

Appellants' exception [R. 25] to this finding is that there is nothing in Chapter 402 which deprives appellee of the right to purchase and drive automobiles for the purpose of sale, or of the right of selling the same, and that the facts found in said finding, if true, are immaterial.

The evidence adduced shows that appellee makes an average net profit of from $10.00 to $15.00 on each automobile he sells. [R. 6.] It was a logical inference from this evidence that the continued imposition of the tax under Chapter 402 would deprive appellant of his profit, destroy his business and thereby effectually deprive him of the right to purchase and drive automobiles in the manner testified to, or at least destroy his ability to do so. An empty right is no right at all.

FINDINGS OF FACT NOS. 15, 16 and 17 [R. 39, 40].

Before discussing these findings, it is necessary that we make explanation relating to the record. At the trial of this cause, counsel for appellee Morf commenced proof of the facts contained in paragraphs VII and VIII of appellee's bill of complaint; Mr. Justice Stephens of the

Court interrupted, inquiring if those facts were denied. Counsel for appellants replied that those facts were admitted. For this reason appellee thereupon ceased proof of the facts alleged in paragraphs VII and VIII. In making up the record on the appeal, through an error, the stipulation aforementioned was omitted, and its omission was not discovered by counsel for appellee until a minute examination of the record was made at the time of writing this brief. Immediately upon such discovery, counsel for appellees sought and received a written stipulation from counsel for appellants that such portion omitted from the record might be included therein [Appendix A], and did immediately, pursuant to Rule 17 of this Honorable Court, file a printed motion for diminution of the record. Inasmuch as the motion is based upon a stipulation of counsel, we dare to assume that the same will be granted, and therefore do take the liberty of adverting to such stipulation and referring to the same as being a part of the record of this case, and have appended a copy thereof to this brief for the convenience of the Court.

The admission by counsel for appellants of the facts alleged in paragraphs VII and VIII of appellees' bill, in response to the query of Mr. Justice Stephens at the time of the trial, is a complete answer to appellants' exceptions to findings Nos. 15, 16 and 17.

FINDING OF FACT No. 18 [R. 40].

Although it appears that appellants "except in part" to the 18th finding [R. 26], yet in their brief (Br. 7) they state that the 18th finding, "while somewhat mixed as to findings of fact and conclusions of law, are not disputed." We, therefore, assume that appellants have abandoned this exception.

FINDING OF FACT No. 19 [R. 40].

This finding is amply supported by the evidence. [R. 60, 61, 62.]. Appellants' exception and attack on this finding is unfounded and their reasoning is certainly far-fetched.

FINDING OF FACT No. 20 [R. 40].

This finding, to which appellants object as an argumentative proposition of law, reads as follows:

> "Chapter 402, Statutes of 1935, does not contemplate or provide for the collection of the fee therein mentioned for the use, construction, maintenance or repair of the public highways. Such fee, as is specifically provided in the Act, is solely for the purpose of reimbursing the State treasury for the added expense which the State may incur in the administration and enforcement of the Act, and the added expense of policing the highways over which 'caravaning' may be conducted."

The trial court could find no other way, in our opinion, because the Legislature, in its enactment of said Chapter 402, did state, completely and definitely, the purpose for which the tax was levied. We quote from Section 6 of the Act:

> "The moneys so derived by the State are intended to reimburse the State treasury for the added expense which the state may incur in the administration and enforcement of this Act, and the added expense of policing the highways over which such caravaning may be conducted, so as to provide for the safety of traffic on such highways where caravaning is being conducted." [R. 12.]

The Act further provides:

> "All fees from the issuance of permits collected by the Motor Vehicle Department under this Act shall be paid into the general fund in the State Treasury.
>
> Said Department shall file with the Controller on or before February first and August first of each year, a detailed account of the receipts of said Department from this source for the six months next preceding."

FINDING OF FACT No. 21 [R. 40, 41].

This finding is amply supported by the evidence. The evidence shows that six men have been assigned to handle caravaning [R. 56]; they receive $170.00 to $225.00 per month each [R. 59]; that approximately 14,000 cars were imported into the state during the first eleven months of 1935 [R. 58], and during the same period appellee imported approximately 3000 of these cars. Let us compute, then, the cost of policing the highways as reflected by the evidence. Taking an average monthly salary per man assigned of $200.00, which is what the trial court did in its opinion, we have a total cost of $13,200.00 for the extra policing of the highways caused by the importation of 14,000 automobiles. This sum of $13,200.00 divided by 14,000 automobiles gives us a total cost per car of 94 cents plus. *This, entirely outside of the fact that the evidence is that if the caravaning of automobiles were stopped, these six men would not be dropped from the state payroll, but would be assigned to other duties.* [R. 53.] In the foregoing computation every intendment of the evidence has been viewed most favorably to appellants, because the witness Cato, Chief of the California

Highway Patrol, actually testified, "There are *three* men whose specific duty is the enforcement of this law; that is, since it was in effect." [R. 53.] Using the same method of computation this reduces the cost per car caused by caravaning into the state to 47 cents per car. This is upon the showing made by appellants' own witnesses only.

In attempting to bolster the tax of $15.00 per car into reasonableness the appellants refer to the testimony of the witness Bevins, "The administration expense of issuing caravan permits is about $5.00 for each permit." Appellants would have the District Court and this Court believe that the cost of issuing one permit for one automobile, a purely clerical task, is $5.00, as compared to the sum of 94 cents plus (most favorable to appellants) for the cost of policing and regulating the same automobile. The same witness adds this testimony. Referring to the registration provision of the California Vehicle Act, pertaining to private cars of the pleasure type, such as are imported by appellee, he stated that of the statutory fee of $3.00 (which also includes two license plates and two certificates), the Motor Vehicle Department is only allowed 35 percent for expenses. [R. 59.] This means that for registration, the issuance of two certificates and two license plates, the Department is operating on $1.05 per car for said purpose. Referring to a registration provision of the Motor Vehicle Act, administered by the same witness, we find that the entire cost of transferring title to a car and the issuance of two new certificates is only $1.00 [Sec. 377, Vehicle Code. Appendix C.] The mere statement that it costs $5.00 to issue a permit, which the evidence shows is issued at the border at the time of the entry of the automobile, is so prepos-

terous on its face as to make unnecessary further comment. The trial court apparently held the same view for the opinion indicates that the District Court did not believe the witness. It must be remembered that the province of judging the credibility of a witness and the reasonableness of his testimony lies exclusively with the trial court.

FINDING OF FACT No. 22 [R. 41].

The second sentence of appellants' exception to said finding [R. 27, 28] is unintelligible, for which reason appellee is unable to answer the same. The second sentence of finding No. 22 is but a continuation of findings Nos. 20 and 21, wherein it is properly found that the tax of $15.00, as is specifically provided in the Act, is solely for the purpose of administration and enforcement of the Act, and the added expense of policing the highways over which caravaning may be conducted, and that the sum of $15.00 is arbitrarily fixed and is unreasonable in amount, and that the increased cost of policing the highways caused by the movement of automobiles on their own wheels from without to within the state for the purpose of sale is comparatively small, and does not justify the excessive and unreasonable amount of the tax and would be amply met by a license fee of less than one-third the amount charged.

FINDING OF FACT No. 23 [R. 41].

This finding is objected to as an argumentative proposition of law. That the fee permits only limited movement is readily ascertained and supported by the wording of the Act itself. The balance of the finding is a direct statement of some of the terms of the Act.

FINDING OF FACT No. 24 [R. 41].

The portion of the Court's finding objected to is substantiated by the evidence showing that approximately 14,000 automobiles were transported into the state for the first eleven months of 1935 [R. 58], of which appellant brought in approximately 3000. [R. 63.]

FINDING OF FACT No. 25 [R. 41].

There is nothing in appellants' exception to this finding [R. 28] which assigns any reason for this Court to disturb it. Suffice it to say that this finding is amply supported by the evidence. [R. 60; Stipulation, Appendix A.]

FINDING OF FACT No. 26 [R. 41].

This finding is fully sustained by the evidence. The appellee Morf testified that in the period of a single month, on the average, 125 to 200 of the cars he imports, or about one-half thereof, are sold at his place of business in Los Angeles to dealers from cities such as San Diego, San Francisco and San Bernardino, all in California, and Seattle and Portland. After such sale, these cars are transported by said dealers to their respective places of business in said other cities, on their own wheels for the purpose of sale. [R. 61.] It is obvious that a large proportion of these cars are transported wholly intrastate. The witness Cato testified that he had observed some caravaning of automobiles within the State, and that at the time he joined the Department caravaning was being carried on in the State. [R. 54.] It is perfectly obvious from all of the evidence that there constantly and consistently exists within the state of California a large

and steady flow of traffic in the movement of cars intrastate over long distances of highway, upon their own wheels for the purpose of sale between many thousands of dealers. The second sentence of said finding is the statement of an ultimate fact drawn from the terms of said Chapter 402, which by definition specifically exempts movement of automobiles wholly intrastate from payment of the $15.00 tax; and the finding that no other law of California imposes a similar or other fee for such movement in intrastate commerce is nowhere challenged.

FINDING OF FACT No. 27 [R. 42].

Appellants object to this finding as being an argumentative proposition of law.

All of said finding, except the portions hereinafter quoted, are sustained by the Act itself.

We quote from said finding as follows:

> "No police problem is created by the movement of a single vehicle in such manner and for such purpose."

This is amply supported by the evidence, including the testimony of appellants' own witnesses, which shows that no police problem is created by the movement of a single vehicle into the state of California upon its own wheels for the purpose of sale. [R. 49, 50, 56, 62.]

We quote further from said finding:

> "That the movement of four vehicles or less in such manner and for such purposes constitutes no police problem."

This is fully sustained by the evidence, which specifically shows that four cars or less moved together on their own wheels for the purpose of sale constitutes no police problem. [R. 55, 56, 62.]

FINDINGS OF FACT NOS. 28, 29 AND 30 [R. 42].

These findings not disputed.

FINDING OF FACT NO. 31 [R. 42].

This finding is objected to as an argumentative proposition of law.

The trial court, having before it the statutes of the state of California relating to motor vehicles, was justified in finding that the provisions of Chapter 402, making the $15.00 fee in lieu of all other fees, is meaningless and of no benefit to plaintiff. Upon their importation into the state of California, appellee's automobiles are immediately confronted with the payment of all other privately-owned automobile taxes, and are exempt from none of them. The existence or non-existence of other statutes containing taxing provisions is a definite fact, which the trial court had an undoubted right to make the subject of its finding.

FINDING OF FACT 32 [R. 43].

The objection is that the finding is an argumentative proposition of law.

This is a finding by the trial court that the Court finds from the evidence that appellee is in such circumstances

that if Chapter 402 is enforced against him and his particular set of circumstances, it will deprive him of rights guaranteed to him under the Commerce Clause of Section 8 of Article I, and under the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States.

NEGATIVE FINDING OF FACT No. 2 [R. 43].

To appellants' exception [R. 30] to this finding the answer is that the principal element of appellees' business, like that of all automobile dealers, is the purchase, barter and sale of automobiles. If appellants' theory should be entertained, it would result in a holding that any distributor of products, such as a wholesale grocer, a commission merchant, a new car manufacturer, or any of thousands of distributors of different products having their principal place of business on the rails of the transcontinental railways of the country, or upon the vast stretches of public highways over which they transport their products. All business of any magnitude is dependent upon distribution, and distribution is dependent upon interstate commerce, and the safeguards that have been thrown around interstate commerce. If appellee were running an interstate bus line and were engaged in the transportation of passengers for hire, and collected cash fares at every stop, appellants' theory might be more tenable.

NEGATIVE FINDING OF FACT No. 3 [R. 43].

The exception [R. 30] to this finding is in no way related to the finding itself. The evidence amply sustains this finding.

NEGATIVE FINDING OF FACT No. 4 [R. 43].

This finding is supported by the evidence. There is no evidence whatsoever relating to stolen cars or fraudulent registrations by persons engaged in importing automobiles on their own wheels for the purpose of sale.

NEGATIVE FINDING OF FACT No. 5 [R. 43].

Appellants' exception [R. 31] to this finding is not in point. He does not except on the ground that such cars can be moved over the highways of the state without registration or identification.

NEGATIVE FINDING OF FACT No. 7 [R. 43].

The exception [R. 31] is not germane to the issue. This finding is fully supported by the evidence and the subject thereof is discussed in our treatment of finding No. 9.

NEGATIVE FINDING OF FACT No. 8 [R. 44].

The subject matter of this finding is discussed by us in our treatment of affirmative finding No. 9, to which discussion the Court is respectfully referred.

II.

Chapter 402 Discriminates Against Interstate Commerce, and Denies Appellee the Equal Protection of the Law.

A. The Attempted Exaction by Appellants From Appellee of a Tax of $15, as Provided in Chapter 402, Before Permitting Appellee to Transport Into the State of California a Single Car, Alone, and Not in Company With Any Other Car, Upon Its Own Wheels and for the Purpose of Sale, Violates Appellee's Rights Under the Commerce Clause of Section 1, Article 8, and the Equal Protection and Due Process of Law Clauses of the 14th Amendment to the Constitution of the United States.

The trial court found that in September of 1935 appellee purchased a car in Texas and drove it to the border line of California, alone, on its own wheels, for purpose of sale. [R. 16.] It further found that appellee imports 30% to 40% of his cars into California in like manner for the same purpose, and that, in each case, the appellants demand a tax of $15.00 under Chapter 402. [R. 40, 41, 16.] The validity of the tax when applied to single cars thus imported into the state is one of the vital issues of this case. Appellants admit that this is a specific issue. (Brief 28.)

Single Car Causes No Hazard.

There is no conflict in the evidence concerning the fact that a car, driven singly and alone into California, causes no hazard on the highways. The witness Cato, chief of

the California Highway Patrol, and the official charged with the enforcement of the Caravan Act, testified:

> "In my opinion, when there are four or five cars together, it becomes a hazard." [R. 56.]

The witness Walsh testified:

> "It is possible for a single automobile to be brought in from Arizona, into California, for the purpose of sale, by itself, in the ordinary lane of traffic, and I would have no particular occasion to know that such automobile was brought into the state of California for the purpose of sale, * * *." [R. 49, 50.]

At no place in this case have appellants contended that a car driven into California singly for the purpose of sale causes any unusual hazard or police problem on the highways, or a condition other or different from that caused by a car driven alone for any other purpose. As was stated by the trial court:

> "There is nothing in the evidence that indicates any police problem resulting from the use of the highway except through fleet or caravan formation. Yet the act is specifically directed to each and every car falling within the prescribed specifications, in fleet or not, to-wit, entering California upon its own wheels and being for sale." [R. 80.]

Single cars driven into California for purposes other than sale pay no tax comparable to the $15.00 fee. The only fee provided by law to be paid on such car, is the usual registration and license fee, if the car is to be registered in California; appellee must and does pay these fees in addition to the import tax of $15.00, and an additional $3.00 registration fee, and unless he does pay these

registration and license fees he cannot sell the car. *As a matter of fact, under the Vehicle Code, this appellee is required to pay the registration and license fees on his car immediately upon arrival at the boundary line and he cannot traverse any portion of California highways until he does so.* [Sections 140, 370, 371.5, 180.5, *Vehicle Code*, Appendix C; and *Vehicle License Fee Act*, Appendix D.]

A-1. THE CARAVAN ACT DISCRIMINATES AGAINST APPELLEE, WHO DRIVES HIS CARS SINGLY INTO CALIFORNIA, NOT IN FLEET, FOR THE PURPOSE OF SALE, AND IN FAVOR OF OTHER PERSONS: (A) WHO DRIVE CARS SINGLY FROM WITHOUT TO WITHIN CALIFORNIA FOR PURPOSES OTHER THAN SALE, (B) WHO DRIVE CARS SINGLY WHOLLY WITHIN CALIFORNIA FOR PURPOSES OTHER THAN SALE.

(a) The Court can judicially notice the fact that thousands of cars are driven into California, every day of the year, singly, and by private owners, for purposes other than sale. These cars, although of the same type as appellee's singly driven cars, and operated in similar manner as appellee operates his cars (which admittedly cause no police problem), encounter no barriers when they arrive at the California state line, in the form of import duty, license fee, or tax of any kind or description, nor are they subjected to any prohibitory statute whatsoever. On the other hand, when one of appellee's singly driven cars arrives at the California line it is not permitted to enter the state until a tax is paid for it in the sum of $15.00 and a permit issued limiting its movement to appellee's place of business in Los Angeles over a specified

route. When it reaches appellee's place of business the permit is void, and appellee must register the car in his own name, secure license plates for the same, pay the registration fee (the cost of which is $6.00 instead of the usual $3.00), the license fee, and every tax of every description, and comply with every law that the privately owned car must comply with, which comes in free of the caravan tax of $15.00. As we have heretofore shown the Vehicle Code requires appellee to register his cars immediately upon entry into California and to pay all the fees required. The only difference between the privately owned car and the singly driven car owned by appellee is that when appellee's car crosses the state line, he has expressed his intention to sell it. In other words, the caravan tax is levied upon singly moved cars only when such cars constitute goods seeking their market. The intended purpose of sale existing only in the mind of the appellee, bearing no relation to the hazards, or dangers of the highway, or to the regulation or policing thereof, cannot form the basis of a valid classification for the purpose of *taxing a singly driven vehicle in interstate* commerce.

The District Court rightfully found that the avowed purpose of the Caravan Act did not contemplate or provide for the collection of the fee therein mentioned for the use, construction, maintenance or repair of the public highways, *but only to reimburse the state treasury for the "added expense which the state may incur in the administration and enforcement of the Act, and the added expense of policing the highways over which 'caravaning' may be conducted."*

The evidence clearly shows that there is no "added expense" caused by the importation into California of a single vehicle, alone, upon its own wheels, for the purpose of sale.

Appellants rely on the case of *Morf v. Bingaman*, 298 U. S. 407. This case may be readily distinguished from the case at bar. This Honorable Court in its opinion in that case at page 413, says:

> "Discrimination, if any, is between those who drive their cars to market singly and others who drive them for other purposes, and may be subjected to a different tax. Appellant does not assert that he belongs to either class. As the traffic in which he participates is properly taxed, he cannot complain of the imposition of the tax on a business which he does not do. (Citing cases.) *We have no occasion to pass upon the validity of the tax as applied to cars driven singly.*" (Italics added.)

In the instant case the evidence is uncontradicted that the appellee Morf drives into the state of California singly, and not in company with any other cars, over 1,000 cars per year, or, as he puts it, from "thirty per cent to forty per cent" of his total importation. Appellants, in the presentation of their contentions to this Court, make an attempt, in devious ways, to dodge this issue. Their principal effort, however, is spent upon their attempt to convince this Court, in the face of uncontradicted evidence and findings of the District Court to the contrary, that there is no single movement of cars, while, at the same time, they state (Brief 28), that the validity of the tax

with respect to the movement of single cars from without the state upon their own wheels, for the purpose of sale, constitutes one of the principal issues of this case.

Suffice it to say that there is a large movement of singly driven cars by this appellee into California annually, and that this Court has not decided the single car question in the case of *Morf v. Bingaman, supra,* or in any decision which we can discover up to the time of the writing of this brief.

Under all the evidence in this case, and according to the findings of the District Court, appellee is within the class of persons importing singly driven cars, in a substantial portion of his operations, and he is being discriminated against as a part of this class by appellants when they attempt the enforcement of Chapter 402 against him, and especially when they exact from him a tax of $15.00 for each car he imports singly across the California line, while on the other hand thousands of singly driven cars are permitted to enter the state for other purposes, without the same or similar burden.

(b) The Court can also judicially notice that thousands of cars are driven singly, *wholly within California* for purposes other than sale. These cars also are operated in a similar manner as are appellee's single cars (which admittedly cause no police problem). The argument in paragraph (a) hereof, applies here, except that in this instance, where the cars are driven wholly in California, by a resident of California, such car must be registered and licensed. Appellee must pay the same registration and license fees, and in addition thereto, an extra $3.00 registration fee, and the caravan fee of $15.00.

A–2. THE CARAVAN TAX DISCRIMINATES AGAINST APPELLEE IN THE INTERSTATE IMPORTATION OF HIS SINGLY DRIVEN CARS, NOT IN FLEET, IN FAVOR OF SINGLY DRIVEN CARS MOVING WHOLLY INTRASTATE, IN LIKE MANNER FOR THE PURPOSE OF SALE.

The District Court found that there is considerable transportation, wholly within the state of California, in intrastate commerce of cars on their own wheels, singly, for the purpose of sale; that under the provisions of Chapter 402 such intrastate movement of cars is not subject to the $15.00 fee, and there is no other law of California imposing a similar or other fee for such intrastate movement. [R. 41.] This finding clearly manifests the discrimination against appellee, with respect to singly driven cars imported into the state, and in favor of persons conducting a considerable intrastate movement of such cars. It is important to note here that appellee's cars, so imported, come into direct sales competition with cars driven wholly within the state for sale. Appellees, on this point, seek comfort in the case of *Morf v. Bingaman, supra*, which is clearly distinguishable from the instant case. This Honorable Court said, of the act there in question:

> "The statute applies alike to all automobiles transported for sale, whether moving intrastate or interstate."

The exact converse is of course true of the California Caravan Act, which by express definition applies only to interstate movements.

In a desperate effort to avoid this point, appellants make two contentions: (a) That there is no intrastate move-

ment of cars for sale; and (b) that there are other fees which apply to such intrastate cars. Their first contention is conclusively answered by the evidence and the findings of the District Court. Their second contention on this point is as conclusively answered by the trial court's findings and by the provisions of the California Vehicle Code, which we have heretofore discussed.

Further attempting to support their contention (a) above, appellants fancifully assume, that because appellee bought only 50 cars in California out of a total of approximately 3000, that there is no intrastate movement of cars for sale; and, that if there is it is only a continuation of the interstate movement of appellee and others in like circumstances. It is a matter of common knowledge that the reason that used car dealers, like appellee, cannot purchase used cars in California to any extent is because the new car dealer who is also necessarily a used car dealer, by virtue of his acceptance of used cars in trade, will not generally wholesale any of such cars to a strictly used car dealer, who in turn would retail them. Hence, appellee, and others, purchase in other states used cars which they wholesale to strictly used car dealers for retail purposes. When appellee Morf testified that "if the used car industry is to exist they must get used cars from without the state of California" [R. 63], he had reference to the strictly used car dealer, and not the new car dealer who also deals largely in used cars.

Appellants also forget that appellee Morf testified [R. 61], that "dealers come to Los Angeles and buy these cars, and drive them away, the same as new cars." About 2000 of appellee's cars are sold annually in this manner to dealers from cities outside of, and long distances from

Los Angeles. Appellants contend, however, that this is but a continuation of the interstate movement of such cars. Such contention is entirely without foundation. In the first place, before any of these cars are sold to said dealers, they have definitely come to rest and have become a part of the taxable personal property situated in California, and have been registered and licensed under the provisions of the Vehicle Code. [Appendix C.] By virtue of the very terms of Chapter 402 limiting their interstate movement to a definite terminus, they cannot, after coming to rest at appellee's place of business, be further moved under the terms of the permit issued under Chapter 402. Furthermore, the cars which appellee sells to said dealers immediately become their property and appellee's interest therein is terminated. They are transported within the state, not by appellee but by these dealers, by virtue of a permanent registration and license, paid for by this appellee. It is therefore plain that the movement of these cars from appellee's place of business to those of the dealers purchasing them, is an entirely new, separate, distinct and unrelated intrastate movement, and in no sense of the word, either theoretically or in practice, a continuation of the interstate movement. In addition it should be noted that the permit issued under Chapter 402 is not transferable to the new owner, and when the new owner drives the car to his place of business for resale, the caravan permit has terminated and become void. [Appendix B.]

Appellants argue in their brief (49-60) that even though the movement of cars from without the state should include a considerable number of single cars (which the evidence shows to be true) this would not invalidate the classification.

The evidence amply supports the District Court's findings that there is no police problem resulting from the use of the highways by a single vehicle driven into California on its own wheels for the purpose of sale, nor in fleet movement of such automobiles, when made up of four cars or less. [R. 38.] Appellants nowhere argue that any police problem does result from the interstate movement of a single vehicle on its own wheels for the purpose of sale, that does not result, equally, from the movement of any other single vehicle for any other purpose. They urge, however, that such vehicles must be included so that none of the offending cars, if there are any, shall escape. They then plead for the "reasonable margin" mentioned in the case of *Euclid v. Ambler Realty Co.*, 272 U. S. 365. The evidence shows and the District Court found that between 30% and 40% of appellee's cars are imported singly, and not in company with any other car. Such percentage is hardly a reasonable margin; but is, on the other hand, a large separate class, entitled to a different, and *constitutional* treatment by the Legislature.

Appellants give no valid reasons why single automobiles cannot be so constitutionally distinguished. Appellee's cars are subjected to inspection at the border, and certainly a single car can be distinguished from cars in tandem instantly. All the inspector has to do is to look at it. Appellants contend only that cars in tandem create the problem, yet they would have this Court believe that it is necessary to include the single cars in order to catch

the cars in tandem. This is so ridiculous that it does not warrant further comment.

On page 54 of their brief, appellants seek comfort in the case of *Hodge Drive-It-Yourself Co. v. Cincinnati*, 284 U. S. 335. Appellants state the holding in that case as being that single cars rented to drivers, could be subjected to license fee and safety requirements more onerous than those imposed upon private automobiles driven by their owners. Appellants go on to state that there are many points of similarity between the automobile operations classified in the *Hodge* case and the movement of single cars, not in caravan, from without the state for purposes of sale. They ask us to read the opinion of the Supreme Court of Ohio in that case for these points of similarity. We are more content to read the opinion of this Court in that case. We quote from page 337 of the opinion at which place this Court said:

> "The Court below found that the operation of automobiles by such hirers is extra-hazardous to the public."

In the instant case the trial court found [Affirmative Finding No. 8, R. 38]:

> "There is no police problem resulting from the use of the highways by a single vehicle driven into the state of California upon its own wheels for the purpose of sale, and there is no police problem created by such movement differing from the police problem created by any other movement of a single vehicle for any other purpose."

We therefore fail to see the many points of similarity in the automobile operations described in the *Hodge* case, and the instant case which are so vividly perceived by appellants. We are content to rest on the finding of the trial court in the instant case in this respect.

Appellants also rest on the *Hodge* case for another point of similarity with the case at bar. They say that in both cases the owners of the cars are using the highways for direct commercial gain as a place to conduct a private business, differing radically from ordinary uses, and subjecting the ordinary users to unusual hazards. The Court will please keep in mind that at this point, appellants refer to appellees' single car movement only. In the *Hodge* case the operation regulated was the business of owning automobiles and leasing them for compensation to be driven by the lessees on the city streets and elsewhere. This Court says at 284 U. S. 335, 337:

> "Unquestionably appellants contemplate that those hiring their cars will operate them upon the streets. In fact such use of the streets is essential to appellant's business."

We fail to see any possible connection between such described operation and the operation of appellee in his importation of a single automobile. The trial court in the instant case found as a fact that appellee's single car operation did not create an unusual hazard or police problem [R. 38], and we do not think that this Court will agree that appellee is conducting his business on the public highways of the State of California, any more than is any other distributor of any other commodity which moves in interstate (or intrastate) commerce.

B. THE ATTEMPTED EXACTION BY APPELLANTS FROM APPELLEE OF A TAX OF $30, AS PROVIDED IN CHAPTER 402, BEFORE PERMITTING APPELLEE TO TRANSPORT INTO CALIFORNIA, TWO AUTOMOBILES, ONE IN TOW OF THE OTHER, NOT IN COMPANY WITH ANY OTHER AUTOMOBILES, UPON THEIR OWN WHEELS, AND FOR THE PURPOSE OF SALE, VIOLATES APPELLEE'S RIGHTS UNDER THE COMMERCE CLAUSE OF SECTION 8, ARTICLE I, AND THE EQUAL PROTECTION AND DUE PROCESS OF LAW CLAUSES OF THE 14TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The argument of appellee under the single car issue is adopted under this issue, because the trial court found that the fleet movement of four cars or less does not cause any unusual hazard or police problem [R. 38].

We wish, however, to remark briefly on a matter particularly relevant to tandem car movement when not in caravan. Appellants failed to introduce any evidence showing that appellee's operation of sometimes towing one car with another, not in caravan or fleet, created any unusual hazard or police problem. As a matter of fact the Court could take judicial knowledge of the fact that there are over a half million house car trailers traveling over the highways of this nation which are much greater in size than the automobiles imported by appellee, and which create a far greater highway hazard and police problem. This trailer movement is a part of the usual traffic. The court could also take judicial notice that on the highways of California especially, there are

thousands of huge truck and trailer units, weighing many tons more than, and measuring several times the length of, the tandem car unit of appellee. Attention is especially directed to the many large tank truck and trailer units used in transporting oil from the many California oil fields and refineries such as were mentioned by the witness Cato [R. 55]. This traffic is most certainly usual and constant on California's highways. The trial court in its opinion [R. 81], took definite notice of this traffic in the following language:

> "There are single and fleet movements of cars for sale from point to point within the state, and there are other instances of troublesome use of the highways in the State of California as well as across the state lines. Instance the grouping of large vision obscuring trucks with trailers, the practice of hauling from three to five automobiles upon one long truck and trailer, and the trailer living quarters so greatly on the increase. Under the doctrine expressed in the Patisone case, such instances do not necessarily invalidate a classification. They are eloquent of the fact that the defining elements of the Caravan Act classification are not elements of the wrong aimed at and do not gather together the common malefactors but do arbitrarily and unreasonably embrace innocent actors."

The trial court, with this picture before it, could do nothing else but find that appellee's little, ordinary, pleasure type cars, one towing the other, not in fleet or cara-

van, could not possibly create an unusual traffic hazard or police problem. "Unusual" is a relative term and must be so construed.

C. The Attempted Exaction From Appellee, of a Tax of $15, As Provided in Chapter 402, When He Seeks to Import Cars Into California, in Fleet or Group Movements, on Their Own Wheels for the Purpose of Sale, Violates Appellee's Rights Under the Commerce Clause of Section 1, Article 8, and the Equal Protection and Due Process of Law Clauses of the 14th Amendment to the Constitution of the United States.

The trial court found in affirmative finding No. 9 [R. 38], that fleet movement, where made up of more than four cars causes certain traffic difficulties (enumerating them) but it also found that: *"Each and every one of these recited difficulties illustrate rare exceptions rather than rules."* The court further found in finding No. 21 [R. 40], that "The increased cost of policing the highways caused by the movement of automobiles on their own wheels from without the state of California to within the state of California for the purpose of sale is comparatively small * * * and would be amply met by a license fee of less than one-third the amount charged"; and in finding No. 22 [R. 41], the trial court found that "The unreasonableness of the license charge discriminates against the

plaintiff who brings cars into the state for sale in favor of those who deal in used cars obtained from within the state of California. The charge bears no reasonable relation to the purpose for which it is collected and in practical effect constitutes a protective tariff and is unconstitutionally burdensome." These findings are amply sustained by the evidence.

The appellants in this case have devoted all of their time and attention in an attempt to justify an outright levy of an import tax for protective tariff purposes by setting up a bogey man in the shape of imaginary hazards and police problems which they claim exist in fleet movements of automobiles. They have failed miserably in painting their dark picture. The trial court saw through the veil and perceived the true picture as reflected by the evidence. There is no more traffic violation in a fleet movement of cars than the average ratio of traffic violations in the ordinary motor traffic on California's highways. If there is, appellants were in the best position to produce definite and convincing evidence of its existence. *As it stands they succeeded only in convincing the trial court that traffic violations in fleet movements were "rare exceptions."* [Finding 9, R. 38.] The evidence shows that the drivers of cars imported in fleets reasonably comply with traffic rules and regulations and it is our earnest contention that actually no added expense is created to the state of Cali-

fornia. Appellee is glad to obey all reasonable regulatory rules which have been, or may be, promulgated for observance on the highways of California. He does strenuously object, however, to a definite excise tax inflicted under the guise of regulation under the police power of the State. It is easy to see through the scheme which was perpetrated on appellee by the 1935 California Legislature. By Chapter 402 they permitted appellee to bring his cars into California upon payment of a $15.00 tax per car, which tax had nothing to do with police power, and told him that if he paid the tax he might bring the car into California for the purpose of sale. At the same time and effective as of the same date as Chapter 402, this same Legislature passed Section 146.5 of the Vehicle Code [Appendix C], *which in effect told appellee that he could not sell the cars that he imported for the purpose of sale until they had been quarantined for a period of 90 days.* This section, of course, was declared unconstitutional by the same District Court which tried the instant case, *Asher v. Ingels,* 13 F. Supp. 654, and which court declared unconstitutional the act assailed in the case at bar. We respectfully state that we have never seen a more deliberate attempt to tax a man out of business than appellee has been confronted with in this legislative fiasco. This case is a perfect illustration of the maxim that "the power to tax, is the power to destroy."

III.

The Tax of $15 Exacted by Chapter 402 Is Arbitrary, Excessive and Unreasonable. It Is an Unconstitutional Burden Upon Appellee's Interstate Commerce and Discriminates Against Him.

This case is a flagrant example of the ever-increasing and seemingly endless effort on the part of state governments to encroach upon the right of citizens to engage in interstate commerce, free from the dangers of state economic burdens, in the guise of compensatory charges for police and safety measures, and for the use of the highways, when as a matter of fact they are actually engendered for the purpose of making the traffic difficult, if not to actually prohibit it. In the light of decisions of this Court we are confident that this Court will so express itself as to put a stop to a growing tendency, which, if allowed to continue, in our opinion, will entirely vitiate the safeguards which have been enjoyed by the citizens of this Nation since its inception.

A cross-sectional view of this case, and an examination of the statutes of California relating to motor vehicular traffic, the methods pursued by the state of California in financing the maintenance and construction of its highways, the flimsy evidence offered by appellants in justification of this tax, and the obvious inconsistencies offered in appellants' brief, in attempting to convert a definite prohibitive import tax into a seemingly innocuous compensatory charge of services rendered to this appellee, which are actually not rendered, indicates to us but one obvious con-

clusion: that every intendment and purpose of this Act is to force appellee out of business in favor of some particular class or classes of business to which his operations are particularly distasteful or competitive.

The above conclusions are not at all dependent upon guess-work or conjecture upon our part. Witness the amazing bit of testimony offered by the appellants through the witness Martland. This witness testified:

> "I appeared before the Legislative Committee relative to the passage of the law covering this subject of caravaning in March, 1935, upon the invitation of Senator Hornblower and the Motor Car Dealers Association of San Francisco." (Competitors of appellee.)
>
> "I told the Legislative Committee * * * that California automobile plants employed several thousand men and that caravaning, from an economic standpoint was very definitely a threat to local employment, in addition to which it was bringing in a number of transients * * *. My idea in representing these facts was to prevent caravaning entirely or to regulate it in a manner particularly with reference to registration and control on the highways. *The purpose was to reduce caravaning* by regulating it, as that would have been the probable effect. * * *. When the bill was first discussed, the fee was $50.00 and later cut to $15.00." [R. 56, 57.] (Italics added.)

The witness Bevins testified:

> "The caravan statute was taken from the Motor Vehicle Department of the Legislature and placed either in the Revenue and Taxation Committee or the Government Efficiency and Economy; one or the

other. Harry Riley is chairman of the Revenue and Taxation Committee. It is my recollection that the bill was finally passed out of his committee." [R. 59.]

This evidence is particularly enlightening when considered in conjunction with section 146.5 of the California Vehicle Code, which was enacted at the same session of the Legislature as was the Caravan Act. A portion of said section 146.5 [Appendix C], follows:

"Notice of Application for Registration of Vehicle Previously Registered Outside this State. * * *. No vehicle previously registered outside this state shall be registered in this state, nor shall the department issue any certificate of ownership, registration card, nor license plate or plates hereunder therefor *prior to the expiration of ninety* days from the day on which the application for registration thereof hereunder is filed with said department, * * *." (Italics added.)

This section was declared unconstitutional in the case of *Asher v. Ingels,* 13 Fed. Supp. 654, by the same District Court which tried the instant cause, excepting that Mr. Justice Curtis Wilbur, Circuit Judge of the Ninth Circuit, sat in said cause, in place of Mr. Justice Clifton Mathews. This section is hereinabove quoted in part for the purpose of showing the lengths to which the Legislature was urged and persuaded to go in a definite effort, through legislative fiat, and by unreasonable and uncon-

stitutional burdens, to entirely prohibit the interstate commerce in used cars seeking their market over the highways of the Nation, instead of over its transcontinental railroads. That the trial court saw through this thinly veiled subterfuge is apparent from the language of its opinion, as follows [R. 79]:

> "The California Legislature of 1935 legislated extensively upon the subject of motor transportation. It adopted 'The Vehicle Code' (St. 1935, p. 93) and many other acts, relating to the subject of motor transportation, including the so-called Caravan Act (c. 402, Stat. 1935), here under consideration. In Section 146.5 of the vehicle code it provided for the registration of cars previously registered outside California. This District Court sitting as a three-judge court recently declared this section unreasonable, discriminatory, and void. (Asher & Ponder v. Ingels, *et al.*, No. 8144.) Ostensibly its purpose was to prevent the importation of stolen cars into California; *actually it practically prohibited the sale of cars in California that had been registered elsewhere.* We have referred to these several acts to show that the legislature covered the subject of motor vehicle transportation comprehensively and, through separate but related acts sought to apply its legislative discretion to all conditions it deemed desirable to treat. *The purpose of each act is more easily understood and the expressed purpose in each act becomes more definitely a limitation upon its basic theory and purpose through such information.*" (Italics added.)

A. THE $15 TAX IS NOT LEVIED AS COMPENSATION FOR THE MAINTENANCE OR CONSTRUCTION OF THE HIGHWAYS.

This Court, in the case of *United States v. Goldenberg*, 168 U. S. 95, 102, 103, said:

> "The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. He is presumed to know the meaning of words and the rules of grammar. The Courts have no function of legislation, and simply seek to ascertain the will of the legislator. It is true there are cases in which the letter of the statute is not deemed controlling, but the cases are few and exceptional, and only arise when there are cogent reasons for believing that the letter does not fully and accurately disclose the intent. *No mere omission, no mere failure to provide for contingencies,* which it may seem wise to specifically provide for, justify any judicial addition to the language of the statute." (Italics added.)

And again, in the case of *New Lamp Chimney Co. v. Ansonia Brass & Copper Co.*, 91 U. S. 656, 662, 663, this Court said:

> "Statutes must be interpreted according to the intent and meaning of the Legislature, and the intention must, if practicable, be collected from the words of the Act itself; or, if the language is ambiguous, it may be collected from other Acts in *pari materia,* in connection with the words, and sometimes from the cause or necessity of the statute; *but where the language of the Act is unambiguous and explicit, courts are bound to seek for the intention of the Legislature in the words of the Act itself,*

and they are not at liberty to suppose that the Legislature intended anything different from what their language imports." (Italics added.)

The Supreme Court of California, in the case of *In Re Monrovia Evening Post,* 199 Cal. 263, 269, said:

"The intention of the Legislature must be determined from the language of the statute. (25 R. C. L. 961; *Ex Parte* Goodrich, 160 Cal. 410 [Ann. Cas. 1913 A, 56, 117 Pac. 451].)"

See, also, *Sutherland, Statutory Construction,* pp. 312, 313, section 237; 25 *R. C. L.* 961, section 217.

Appellants have abandoned their position in the District Court that the Act exists to assist in policing the highways, and in desperation attempt to support it as a fee for the privilege of using the highways, and for the maintenance and construction thereof. They urge in their brief (Br. 61-68), that the trial court "entertained an erroneous conception of the law" on this point. They quote a portion of the District Court's opinion as a basis of their contention, and then give several reasons why the trial court lapsed into this alleged error. The difficulty with appellants' argument is that they have misinterpreted the District Court's decision on this point. In this connection appellants think that the District Court held "that the use plaintiff makes of the highways does not permit the state to charge him therefor." In this appellants err. The District Court did not so hold, but instead ruled that "the use plaintiff makes of the highways is not a privilege that will support a tax *under the act* for other than such extra policing reasonably required by *fleet movement.*" (Italics added.)

The foregoing clearly shows that the District Court recognized that the state had a right to levy a compensatory tax for the maintenance and construction of highways (if reasonable and non-discriminatory), *but that it had not done so in the Act under consideration.* In arriving at its decision the District Court took cognizance of the language of the Act, to the effect that the highways should not be used without first securing the permit, and the fact that the "fee paid for any caravaning permit issued under this Act shall be *in lieu of all other registration* fees for the use of public highways in this state by motor vehicles *during the period* that such motor vehicle may be operated under and in accordance with such permit upon the public highways in this state." (Italics added.)

It should be noted that such fee is "in lieu of all other *registration fees.*"

The witness Martland testified [R. 57]:

> "My idea in representing these facts was to prevent caravaning entirely, or to regulate it in a manner *particularly with reference to registration and control of the highways.*" (Italics added.)

Clearly, then, the fee provided in the Act was not for the maintenance or construction of the highways, but, as stated by the witness Martland, and in the Act itself, for registration and regulation.

In construing this portion of the Act the District Court properly found that such provision was meaningless, *as there was no statute* requiring the payment of any fee in lieu of the $15.00 tax which appellee does not have to pay, equally with others, in addition to the $15.00 tax. Cer-

tainly appellants did not cite any statute requiring the payment of such a fee (to which appellee is not equally subject) to the District Court, nor do they cite this Court to any such statute. The reason is obvious; there is none.

In a further effort to support their now new position, appellants cite and rely upon the case of *Morf v. Bingaman,* 298 U. S. 407. Unlike the statute in that case, the California Caravan Act, by apt and specific language, clearly expresses its purpose in Section 6. [Appendix B.]

It is eloquent in this case that appellants went to great lengths to produce evidence to show the additional cost of "policing" the highways and the costs of administration caused by so-called "caravaning," but that there is not one iota of evidence in the record concerning the cost of "maintenance or construction" of the state's highways. This is plainly an indication that appellants have never seriously contended that the Act was intended for the "maintenance" or "construction" of the highways.

Right here appellee wants to list for this Court the taxes *he is required to, and does, pay upon each of his cars.*

1. $15.00 under Chapter 402. [Appendix B.]

2. $3.00 registration fee under Section 370 of the Vehicle Code. [Appendix C.]

3. $3.00 additional registration fee under Section 371.5 of the Vehicle Code. [Appendix C.]

4. $1.75 per $100.00 valuation under the provisions of Section 2 of the Vehicle License Fee Act. [Appendix D.]

5. Gasoline tax of 3 cents per gallon. [Appendix F.]

6. In addition, appellee, a resident of California, pays other property taxes and business license taxes.

In other words, appellee pays, on each car, $18.00 more than is paid upon a like vehicle, irrespective of the use to which such other car is put. *In addition, the other car, though paying $18.00 less, is entitled to the free use of the highways, without restriction as to route or time, whereas appellee is limited to certain specified routes* (always to his place of business in Los Angeles), *and not to exceed a period of 90 days.*

We do not believe that appellants will deny that appellee must and does pay all the above taxes.

We do not think that the wording of the statute, as particularly contained in Section 6 thereof, leaves any doubt as to the purpose of the $15.00 tax. Although appellants recommend to this Court that the words of purpose, as contained in Section 6, be lifted bodily from the Act and be disregarded, we do not believe this Court will adopt such a view. Suffice it to say that appellants' argument in this regard presents a novel method of statutory construction. At least it is new to us. We feel that the purpose of the Act and of the $15.00 tax levied thereunder must, if possible, be gleaned from the four corners of the Act itself. This is a fundamental principle of statutory construction. It is only where the wording of the statute leaves the purpose in doubt that other methods of determining its purpose are permissible. *Should this Court, however, feel that additional light should be shed upon the purpose of the $15.00 tax, other than the wording of the Act itself, we desire to call attention to some features of this case which then become germane to this issue.*

The State of California has provided, by existing law, no method for using, nor has it used, nor does it now

use, the $15.00 fee, or any part thereof, collected for each car imported by appellee into the State, for the purpose of highway maintenance and construction. By express provision of Chapter 402, the whole of the $15.00 tax is paid into the General Fund of the State Treasury. [R. 11.] It is not appropriated by the provisions of Chapter 402, to the maintenance or construction of highways, and as a matter of fact it is not appropriated to any use by said Act. The state of California does not maintain or construct its highways out of any appropriations out of the General Fund and it is a matter of statutory record that since the first $15.00 was exacted from this appellee and since the time that Chapter 402 became effective against any person no appropriation has been made by the Legislature of the state of California from the General Fund for the purpose of highway maintenance or construction. The fiscal policy of the state of California is not so arranged that monies intended for highway regulation, maintenance and construction, are placed into the General Fund at all. Other special funds are specifically provided for this purpose, as will be hereafter noted, and it is our serious contention that the Legislature of 1935, knowing well the fiscal policy of the State, and further, attempting at the same time, to legislate broadly with respect to motor vehicle legislation, directed that the $15.00 tax go into the General Fund of the State, *because it did not intend the $15.00 tax to be spent upon highway maintenance or construction.* The fact that the Legislature, in enacting Chapter 402, in Section 6 thereof, stated the purpose of the $15.00 tax, and did not mention as a part thereof, that the money was to reimburse the state for the use, maintenance or construction of the highways, coupled with the fact that

it did not direct the money so collected to be paid into the fund provided as the depository for monies intended to be expended for maintenance and construction of highways completely forecloses, in our opinion, any doubt upon this question. *Further, no part of the cost of highway maintenance or construction is paid by the state from the proceeds of a general property tax.* It is therefore obvious that the Legislature thought it was empowered to, and it did intend to, levy against appellee an occupational tax of $15.00 per car for the privilege of carrying on a purely interstate business, basing the tax upon the extent of such business, although it is well settled that the privilege of carrying on a purely interstate business is not one which the state is empowered to tax. Attention is especially directed to the opinion of this Court in *Morf v. Bingaman*, 298 U. S. 407, wherein appear these words:

> "Nor is it important that a part of the fees collected is not devoted directly to highway maintenance, *the cost of which the State pays in part from the proceeds of a general property tax.* The use for highway maintenance for a fee collected from automobile owners *may be of significance,* when the point is otherwise in doubt, to show that the fee is in fact laid for that purpose and is thus a charge for the privilege of using the highways. Interstate Transit v. Lindsey, 283 U. S. 183, 75 L. Ed. 953, 51 Sup. Ct. 380." (Italics added.)

The attention of the Court is respectfully invited to the unusual situation which appellants have developed. They say that the Court shall not give heed to the wording of the Act in determining the purpose of the $15.00 tax. Then after lifting bodily from the Act its words of purpose from Section 6, which process would then, in our

opinion, leave the purpose of the Act in doubt, appellants immediately proceed to blithely tell this Court, in their brief (64), that this Court has no right to judge the purpose of the Act from the fact that the $15.00 tax goes into the General Fund. In the case of *Interstate Transit v. Lindsey,* 283 U. S. 183, cited by this Court in the above quotation from *Morf v. Bingaman, supra,* this Court said at pages 188, 189:

> "The conclusion that the tax challenged is laid for the privilege of doing business and not as compensation for the use of the highways is confirmed by contrasting Section 4 of the 1927 Act with those statutes *which admittedly provide* for defraying the cost of constructing and maintaining highways and regulating the traffic thereon. The former declares specifically in connection with the privilege tax on interstate busses that the proceeds 'shall go and belong exclusively to the general funds of the state,' on the other hand, in the legislation which Tennessee has provided for defraying the cost of constructing and maintaining the State highways and regulating motor traffic *it has been the consistent practice* to prescribe that monies raised for this purpose shall be segregated and go into the Highway Fund. The present system of motor regulation was inaugurated in 1915. At the same session, the Legislature created a State highway commission with power to construct and maintain highways. In these statutes, and in many later ones, prescribing additional fees for the *registration* and licensing of motor vehicles, imposing gasoline taxes, laying a one-mill road tax, and authorizing the issue of bonds for the construction of highways and bridges the Legislature provided that the proceeds of the fees, taxes, and bonds,

> and of the tolls collected on bridges, should be set apart as State Highway and Bridge Funds to be expended by the Commission exclusively for the construction and maintenance of highways or bridges. The absence in Section 4 of this provision, which characterizes almost every other Tennessee statute relating to the construction and maintenance of highways or the regulation of motor vehicle traffic, *is additional evidence* that the present tax was not exacted for such purposes, but merely as a privilege tax on the carrying on of interstate business." (Italics added.)

The instant case is identical with the case of *Interstate Transit v. Lindsey* on the point here under discussion. As was true in that case, so also in the case at bar. In the legislation by which California has provided for defraying the cost of constructing and maintaining the state highways *and regulating motor traffic,* it has been the consistent practice to prescribe that monies raised for such purposes shall be segregated and go into certain special funds devoted solely to highway maintenance, construction and regulation, *and no part thereof is paid by a property tax or from the General Fund.* For many years past California has maintained special funds in the State Treasury for the purpose of defraying the expenses of maintenance, construction and regulation of public highways. In 1935 (the same session at which Chapter 402 was enacted) the Legislature adopted the Streets and Highways Code. [Statutes 1935, Chapter 29; Appendix G.]

This was a codification of many prior general laws relating to streets and highways, which were repealed upon codification. Article 5, Chapter 1, Division 1, of the Code, is entitled: "Funds for Highway Purposes—Sections 180-204." [Appendix G.]

Section 180 thereof provides that the "State highway general fund in the State Treasury is continued in existence." Section 181 provides for the expenditure of money from such fund. Section 182 provides that, "The 'State Highway Fund' in the State Treasury is continued in existence. The State Highway Fund is the successor to the State highway maintenance fund and the State highway construction fund, . . ." Section 183 provides as follows:

> "Deposit of money in Fund. Appropriation. With the exception of money authorized by law to be deposited in the State highway general fund, *all money available* for the acquisition of real property or interests therein for State highways, *or for the construction, maintenance or improvement of State highways* or highways in State parks shall be deposited *in the State highway fund.* The moneys in said fund are appropriated and shall be allocated and expended for the purposes and in the manner provided in this code." (Italics added.)

In 1923 the Legislature adopted the "Motor Vehicle Fuel License Tax Act." [Statutes 1923, p. 571; Appendix F.] This Act was amended by every Legislature since its adoption, including the 1935 Legislature. Under Section 13 of said Act all money received from the State Controller from motor vehicle fuel license taxes (commonly termed gasoline tax), shall be deposited in the Motor Vehicle Fuel Fund in the State Treasury.

Portions of this money are appropriated, by the express provisions of the Act, to the State Controller, and State Board of Equalization, for administration expenses. After the biennial appropriations to the State Controller and the State Board of Equalization for administrative purposes and after the payment of all refunds, one-third of the net residue is appropriated to all the counties of the state in certain specified proportions to be paid into a "Special road improvement fund" in each county, and expended as provided by law. *All the net remainder shall be paid by the State Treasurer into the "State Highway Fund," which fund is by this Act created.* Said Section 13 also provides that:

> "All money thus paid into the State Highway Fund is appropriated to the Department of Public Works to be expended in accordance with law for the payment of all necessary charges incurred in carrying out the provisions of the Street and Highway Code, and of any other law relating to the acquisition of real property for *and the construction, maintenance or improvement of highways.*" (Italics added.)

At the same 1935 session, the Legislature adopted the Vehicle License Fee Act. [Statutes of 1935, Chapter 362; Appendix D.] Section 2 of said Act provides that a "license fee is hereby imposed for the privilege of operating in this state any vehicle." It further provides that the annual fee shall be "a sum equal to one and three-quarters per cent of the actual market value of such vehicle," and Section 9 provides that "all moneys collected by the Department of Motor Vehicles under the terms of this Act shall be reported daily to the State Controller and at the same time deposited in the State Treasury *to*

the credit of the Motor Vehicle License Fee Fund, which fund is hereby created." The moneys in said fund are hereby appropriated as follows:

> "(a) One per cent, or so much thereof as may be necessary *for the use of the Department of Motor Vehicles in the enforcement of the provisions of this Act.*" (Italics added.)

Then it is provided, after certain payments to cities, cities and counties, and counties, that, of the balance of the moneys in said fund, a sufficient sum shall be set apart from the principal and interest paid, or necessarily to be paid during the 87th and 88th fiscal years on the bonds of the state issued under authority of certain State Highway Acts and the Constitution of California. (All of which bonds are highway bonds.)

The 1935 California Legislature also adopted "The Vehicle Code." [Appendix C.] Under this code, when appellee imports a car into California, upon its arrival at his place of business at Los Angeles (though the Vehicle Code requires payment at the border), and before it is sold, or moved again upon the state highway, appellee must, and he does, register the car in his own name, paying the motor vehicle registration fee of $6.00 provided in the Act, and the "Vehicle License Tax" of $1.75 on each $100.00 of valuation as determined by the Department of Motor Vehicles. This is an immediate contribution by every car imported by appellee to the maintenance and construction of state highways; to the expense of administration of the motor vehicle laws of the State, including administration and salary expense of the California Highway Patrol, which is the policing agency of the highways of the state of California. This car escapes none of the expenses to which every other automobile in the

State contributes, and is charged an additional registration fee of $3.00. *There is no exemption!* And, further, this car does not enjoy any other or different privileges than does the ordinary automobile bearing foreign licenses and registration, which is not for sale as it crosses the state boundary. We can find no law granting appellee any such privilege, and certainly appellants cite no such law. If the foreign car is not for sale it may enter the state without tax, and if it is desired to register it in California it may travel to Los Angeles over the same highway, without charge, burden or interference.

When appellee registers his car, pays the registration fee, and the license fee (not the caravan fee), the money goes into the Motor Vehicle Fund. Not exceeding 35 per cent of this fund is appropriated to the maintenance of the Motor Vehicle Department and the necessary expenses in carrying out the provisions of the Vehicle Code, and in enforcing all laws regulating the operation of vehicles for the use of the State's highways. The balance of the Motor Vehicle Fund (known as "Net Receipts") is appropriated one-half to the counties of the state in certain proportions and the other one-half of the "Net Receipts" is appropriated into the "State Highway Fund." [Sections 776-781, Vehicle Code; Appendix C.]

With a complete machinery set-up, and a definite fiscal policy established by the Legislature at the very same time as the enactment of the Caravan Act, and with the Legislature declaring that "all money available for the acquisition of real property or interests therein for state highways, or for the construction, maintenance or improvement of state highways, or highways in state parks shall be deposited in the State Highway Fund" [Appendix E], if the Legislature intended that this $15.00 tax

on appellee should be used to maintain or construct highways, why did they not direct, in Chapter 402, such provisions as would finally put the money into the State Highway Fund? Or if the Legislature intended that appellee's $15.00 should go to construction and maintenance of the highways and also to the policing and regulation of the highways, why did they not direct, in Chapter 402, that the money be paid into the Motor Vehicle Fund where 35 per cent of it would go to the regulation and policing of the highways and the balance of 65 per cent would find its way to the county highway funds and the State Highway Fund for the construction and maintenance of the highways?

From the foregoing, it is plain that if Chapter 402 has any valid purpose it is that purpose ascribed to it by the finding of the trial court. [R. 40.] The trial court further found that, viewed in the light of such purpose the $15.00 tax was arbitrary and unreasonable in amount. [R. 40.]

While appellant relies on *Morf v. Bingaman,* 298 U. S. 407, on this point, that case is easily distinguishable from the case at bar.

First: as to the amount of the tax. The tax in *Morf v. Bingaman* was $7.50 for a single car, and $5.00 for the towed car. The trial court in that case found the tax to be reasonable, while in the instant case, the trial court found the $15.00 tax unreasonable, excessive and arbitrary.

Second: In *Morf v. Bingaman* the reasonableness of the fee with respect to singly driven cars, alone, not in fleet, was not involved and the finding of the trial court, as well as the decision of this Court, as to the reason-

ableness of the fee was predicated solely upon the tax when applied to fleet or group movement of cars. This Court said in *Morf v. Bingaman, supra:* "We have no occasion to pass upon the validity of the tax as applied to cars driven singly." It has been made apparent that the reasonableness of the tax in the instant case, when applied to a single car movement, presents features which were not involved in *Morf v. Bingaman.*

Third: The payment of the tax involved under the New Mexico statute in *Morf v. Bingaman, supra,* placed no restrictions upon time, or routes traveled in the state, while in the instant case the statute definitely restricts and limits appellee to "the trip or trips to be specified in said permit," and in time, in no event beyond ninety days.

Fourth: The taxes collected under the New Mexico Act found their way into funds devoted to highway construction, maintenance, regulation and administration expenses. As appears heretofore, none of the $15.00 tax in the instant case is devoted to highway purposes of any kind or nature.

Fifth: In the *Morf v. Bingaman* case, the evidence showed that appellee's cars crossing the highways of New Mexico did not come to rest within that state, but were destined for delivery in California; therefore, they never became personal property taxable as such in New Mexico, and contributed nothing to highway taxes, other than the caravan tax. The converse is true in the case at bar, wherein appellees' cars, after the exaction of the $15.00 tax, come to rest within the state, acquire a situs for the purpose of taxation and immediately pay like taxes and usual charges levied against all other cars (also additional registration fee of $3.00).

IV.

The California Highway Carriers Act Does Not Apply to Appellee.

Appellants in their brief (81-85) admit that the Highway Carriers Act [Appendix G] does not apply to appellee, except in the following particulars, (1) the requirement of a permit (which will be granted appellee upon request without cost) and (2) the liability insurance requirement of said act. In this, we feel, appellants are in error. Section 1, paragraph (f), defines the term "highway carrier" as follows:

> "The term 'highway carrier' when used in this act means every corporation or person, their lessees, trustees, receivers or trustees appointed by any Court whatsoever engaged in transportation of property for compensation or hire as a business over any public highway in this State by means of a motor vehicle or motor vehicles. However, it does not include . . ., *nor does it include persons hauling their own products.*" (Italics added.)

The Court found [R. 42] that "the plaintiff is not a common carrier, accepts no article for transportation for hire, and transports only his own property." Appellants in their brief do not dispute this finding. [Br. 7.]

Section 3 of said Highway Carriers Act provides that

> "*no highway carrier,* . . . shall engage in the business of transportation of property for compensation by motor vehicle on any public highway in this state without first having obtained from the Railroad Commission a permit authorizing such operation." (Italics added.)

Section 5 provides that

> "The Railroad Commission shall, in granting permits under the provisions of this act, require the

> *highway carrier* to procure, . . . adequate protection, as required in Section 6 hereof, ..." (Italics added.)

It will thus be seen that appellee is definitely excluded from the definition of the term "Highway Carrier" as defined in the Highway Carriers Act, hence when provisions are made for a "highway carrier" to procure a permit, or obtain "adequate protection" in the form of liability insurance, *appellee is expressly excluded.*

Appellants urge, however, that the provision contained in Section 1 of Chapter 402, that

> "The caravaning of motor vehicles as herein defined shall be considered as the transportation of property for hire by motor vehicle and shall be subject to all the laws of this state relative to the transportation of property for hire by Motor Vehicle upon the public highways of this state,"

places appellee within the definition of a "highway carrier" as defined in the Highway Carriers' Act, and subjects him to all the burdens thereof, other than the $25.00 fee which does not apply. To this we answer that the Legislature cannot, by legislative fiat, make appellee assume the status of a "transporter for hire." As said by the District Court: "if the law attempts to fix upon plaintiff a status not justified by the facts, it goes beyond the power of the Legislature and is to that extent void as to him. *Frost Trucking Co. v. R. R. Com.*, 271 U. S. 583." [R. 82, 83.] While it does not appear in the record it is a fact that appellants have not, since the institution of this action, requested or demanded that appellee have a permit or deposit with the Railroad Commission a policy of liability insurance. It is also true, though not appearing in the record, that appellee does carry such insurance.

V.

The $15.00 Tax Required Under Chapter 402, Is An Import Tax.

Section 1 of Chapter 402 defines caravaning as follows:

> "The term 'caravaning' as used in this act shall mean the transportation from without the State of any motor vehicle operated on its own wheels, or in tow of another motor vehicle, for the purpose of selling or offering the same for sale to or by any agent, dealer, manufacturers' representative, purchaser, or prospective purchaser, whether such agent, dealer, manufacturers' representative, purchaser or prospective purchaser may be located within or without the State."

This is the only definition in the Act defining "caravaning." Nowhere in said definition is the use of the highways mentioned. The evil which the Act attempts to regulate is contained in the above definition and at no other place and in no other words, and the real evil is contained in the words "transportation from without the State * * * for the purpose of selling or offering the same for sale * * *." *These words define but one thing, and that is, an import tax.* Let us analyse this factor in conjunction with another law of the state. When appellee arrives at the California border line with a motor vehicle owned by him, registered in another state, he arrives in this position: He is a resident of Los Angeles, California; is the owner of the automobile and the automobile is registered in his name in another state. Under the provisions of the Vehicle Code he is not entitled to drive this automobile on even one foot of California highway unless and until he registers this car in California and pays $6.00 registration fee and a license tax of $1.75 for each $100 valuation. Please note that he is not entitled to drive

this car under a nonresident permit because he is not a nonresident owner. He is a resident owner.

Now immediately upon registering the car in California in his own name, and paying the registration fee and license tax, he has paid to use the highways of the state of California for the balance of the calendar year, but he must do this under the Vehicle Code before this car traverses an inch of California highway; therefore, the $15.00 caravan tax can be nothing else than a tax for the privilege of importing this car into California. It can be nothing else because the Vehicle Code provides the sole method and manner and time for the payment by appellee for his privilige of using the highways of California. Having provided this method, and fixed the amount and the time, and having in effect stated that upon compliance therewith appellee's car shall be permitted to use the highways of California for the balance of the calendar year, there remains no other reason for the collection of $15.00 than the fact that when the car arrives at the border it is for sale.

That this $15.00 tax is an import tax is further borne out by the fact that if appellee, demands and receives, at the border, upon the payment of the $6.00 registration fee, and the $1.75 per $100.00 license tax, California registration and plates (which appellee is required to do and does pay in Los Angeles, less than a day after the car is at the border) he could then have unlimited use of the highways, without restriction to route or time. The $15.00 caravan tax is therefore plainly a tax upon importation, for what difference does it make if the registration and license fees are paid at Los Angeles, or at the port of entry? *Appellants have a right to demand payment at either place.*

VI.
Authorities.

The law of this case governs alike, in the main, all of appellee's operations hereinbefore separately analyzed. The well-settled pronouncements of this Court which are germane to the issues heretofore discussed should, in our opinion, be treated collectively at this point. This we proceed to do.

The decisions of this Court do not leave in doubt the rights of the several states with respect to the exclusive power vested in Congress by Article I, section 8, of the Constitution, to regulate commerce among the several states, and they are equally clear with reference to the inhibitions imposed upon the states by the Equal Protection and Due Process clauses of the Fourteenth Amendment to the Constitution.

Under the Commerce Clause, the principle has long been recognized that a state may legislate with respect to inspection laws and similar police regulations, local rather than national in character. With specific relation to special facilities furnished by the states, and used as well by interstate as by intrastate commerce (such as highways), it is now recognized by settled precedents that compensation by way of taxation may be exacted by the state from the various classes of motor vehicular traffic using its highways. Where such taxation, however, is directed to and levied upon persons engaged in interstate, as distinguished from intrastate, commerce, the valid limits thereof have been unalterably and clearly defined.

Such taxation will be held to be invalid and unconstitutionally burdensome on interstate commerce, unless:

1. It is reasonable in amount.

2. It does not discriminate against interstate commerce.

3. It is levied only as compensation for the use, maintenance and construction, or policing and regulation of the highways (plus reasonable administrative cost), and is based upon the use made, or to be made, of the highways.

Should the tax fail to meet *any one* of the above requirements, it is an unreasonable burden and obstruction to interstate commerce, or a violation of the equal protection clause, and must be held unconstitutional.

This Honorable Court, in the case of *Interstate Transit v. Lindsey*, 283 U. S. 183, speaking through Mr. Justice Brandeis, said:

> "While a state may not lay a tax on the privilege of engaging in interstate commerce (Sprout v. South Bend, 277 U. S. 163, 72 L. Ed. 833, 62 A. L. R. 45, 48 S. Ct. 502), it may impose even upon motor vehicles engaged exclusively in interstate commerce a charge, as compensation for the use of the public highways, which is a fair contribution to the cost of constructing and maintaining them and of regulating the traffic thereon. (Citing cases.) As such a charge is a direct burden on interstate commerce, the tax cannot be sustained *unless it appears affirmatively*, in some way, that it is levied *only as compensation* for use of the highways or to defray the expense of regulating motor traffic." (Italics added.)

Further, at page 190:

"Being free to levy occupation taxes, states may tax the privilege of doing an *intrastate* bus business without regard to whether the charge imposed represents merely a fair compensation for the use of their highways. . . . . But since a state may demand of one carrying on an *interstate* bus business only fair compensation for what it gives, *such imposition, though termed a tax, cannot be tested by standards which generally determine the validity of taxes. Being valid only if compensatory,* the charge must be necessarily predicated upon the use made, or to be made, of the highways of the state. Clark v. Poor, 274, U. S. 554, 71 L. Ed. 1199, 47 S. Ct. 702, *supra. In the present act the amount of the tax is not dependent upon such use.* It does not rise with an increase in mileage traveled, or even with the number of passengers actually carried on the highways of the state. Nor is it related to the degree of wear and tear incident to the use of motor vehicles of different sizes and weights, except in so far as this is indirectly affected by carrying capacity. The tax is proportioned solely to the earning capacity of the vehicle. *Accordingly, there is here no sufficient relation between the measure employed and the extent or manner of use,* to justify the holding that the tax was a charge made merely as compensation for the use of the highways by interstate busses. We need not therefore consider whether the tax exacted from this appellant is unreasonably large or unjustly discriminatory." (Italics added.)

We have taken the liberty of a full quotation from the foregoing case, as we feel that it sets forth a clear and concise exposition of the elements which are necessary to

the existence of a valid motor vehicular tax affecting interstate commerce. The other cases decided by this Court are to the same effect; among these cases we cite the following:

Hendrick v. Maryland, 235 U. S. 610;

Sprout v. South Bend, 277 U. S. 160;

Kane v. New Jersey, 242 U. S. 160;

Clark v. Poor, 274 U. S. 554;

Sproles v. Binford, 286 U. S. 374;

Michigan Pub. Utilities Com. v. Duke, 266 U. S. 570;

Buck v. Kuykendall, 267 U. S. 307;

Morf v. Bingaman, 298 U. S. 407;

Interstate Busses Corp. v. Blodgett, 276 U. S. 245;

Morris v. Duby, 274 U. S. 135;

Continental Baking Co. v. Woodring, 286 U. S. 352;

Hicklin v. Coney, 290 U. S. 169;

Aero Mayflower Transit Co. v. Georgia Pub. Serv. Com., 295 U. S. 285.

1. ALL OF THESE CASES ARE IN AGREEMENT ON THE POINT THAT, IF THE TAX IS EXCESSIVE OR IN AN AMOUNT UNREASONABLY LARGE, IT MUST BE DECLARED UNCONSTITUTIONAL.

In the recent case of *Morf v. Bingaman, supra,* this Honorable Court said, concerning this element of the tax:

> *"It is not shown to exceed a reasonable charge* for the privilege and for defraying the cost of police regulation of the traffic involved, . . ."

And, further:

> ". . . the levy of a flat fee *not shown to be unreasonable in amount,* . . . . is not a forbidden burden on interstate commerce." (Italics added.)

The Court further said of the tax, that it was one "whose only effect, even when applied to interstate traffic, is to enable the state to police it, and to impose upon it a *reasonable charge, to defray the burden* of this state expense, and for the privilege of using the state's highways." (Italics added.)

In *Kane v. New Jersey, supra,* it is said that "the amount of the fee is not so large as to be unreasonable."

In *Michigan Public Utilities Com. v. Duke, supra,* the Court, speaking through Mr. Justice Butler, said, on this point:

> "This court has held . . . . that a *reasonable,* graduated license fee, imposed by a state on motor vehicles used in interstate commerce, does not constitute a direct burden on interstate commerce, and that a state which, at its own expense, furnishes special facilities for the use of those engaged in intrastate and interstate commerce, may exact *compensation* therefore, and *if the charges are reasonable* and uniform, they constitute no burden on interstate commerce." (Italics added.)

Mr. Justice McReynolds, in delivering the opinion of the Court in *Hendrick v. Maryland,* probably the first important decision of this Court dealing with the subject, at three separate portions of the opinion refers to the reasonableness in amount which is required of such taxes. At one of these places, he says: "The reasonableness of the

state's action is always open to inquiry in so far as it affects interstate commerce, . . ." and he states that the fees constitute no burden on interstate commerce "so long as they are reasonable."

In *Interstate Busses Corp. v. Blodgett, supra,* Mr. Justice Stone said of the fee, in delivering the Court's opinion:

> "there is no evidence that the tax here is in itself *an unreasonable charge for the privilege.*" (Italics added.)

As one of the determining factors in its decision, the Court, speaking through Mr. Justice Cardozo, in *Aero Mayflower T. Co. v. Georgia Pub. Serv. Com., supra,* held:

> "The fee is moderate in amount."

In *Clark v. Poor, supra,* we find the following:

> "Nor is it suggested *that the tax is so large* as to obstruct interstate commerce."

And further:

> ". . . the tax is . . . not objectionable in amount, . . ." (Italics added.)

In *Sprout v. South Bend, supra,* Mr. Justice Brandeis delivered the opinion of the Court, wherein it was held that it did not appear that the amount collected under the ordinance was no more than was reasonably required for such a purpose, and the fee was held invalid for said reason, among others. The Court there said:

> ". . . and that a license fee *no larger in amount than is reasonably required to defray the expense of administering the regulations may be demanded.*" (Italics added.)

From the above cases, it is made to appear most decisively that, if the fee levied by the type of statute here under discussion is excessive or unreasonably large in amount, the tax must fall by reason of being an unconstitutional burden on interstate commerce, *and this defect alone is sufficient to condemn the Act.*

2. Even Though Reasonable in Amount, the Tax Must Fall if It Discriminates Against Interstate Commerce in Any Respect.

This requirement is as well established as the one previously discussed, and none of the cases dealing with the subject fail to mention the necessity of it.

Thus, in *Morf v. Bingaman, supra,* the court said:

> "The statute applies alike to all automobiles transported for sale, whether moving intrastate or interstate." And the court further mentions that the charge is such as the state may impose "if non-discriminatory".

It was said of the fee in *Aero Mayflower Transit Co. v. Georgia Pub. Serv. Com., supra,*

> ". . . it is exacted without hostility to foreign or interstate transactions, being imposed also upon domestic vehicles operated in like conditions."

The court, in *Sprout v. South Bend, supra,* said:

> "It is true that, in the absence of Federal legislation covering the subject, the state may impose, even upon vehicles using the highways exclusively in interstate commerce, *non-discriminatory regulations* for the purpose of insuring the public safety and convenience; . . ." (Italics added.)

"Of course, the state may not discriminate against interstate commerce." Morris v. Duby, 274 U. S. 135, 143.

Without multiplying examples, it becomes apparent that the second requisite of valid legislation of this type is the total absence of discrimination against interstate commerce, as such discrimination violates the inhibitions against denying the equal protection of the laws, as well as the Interstate Commerce Clause.

3. IT MUST BE MADE TO APPEAR, BY REASONABLE CONSTRUCTION OF THE ACT, AND BY APPLYING THE SETTLED PRINCIPLES RELATING TO CLASSIFICATIONS PERMITTED UNDER THE EQUAL PROTECTION CLAUSE, THAT THE TAX IS LEVIED, EITHER TO COMPENSATE FOR THE USE, MAINTENANCE OR CONSTRUCTION OF THE HIGHWAYS, OR THE POLICING AND REGULATION THEREOF, AND, FURTHER, THAT THE TAX ADOPTED, AND THE TERMS OF THE ACT AS A WHOLE, BEAR A REASONABLE, SUBSTANTIAL, AND REAL RELATION TO THE OBJECT TO BE ACCOMPLISHED, I. E., REGULATION OR COST OF FACILITIES FURNISHED.

It is under the above rule that many enactments, conceived for the purpose of destroying, harassing, burdening and impeding legitimate interstate commercial transactions, and enacted under the guise of police power or compensatory statutes, have been declared unconstitutional and void, by reason of the fact that the terms thereof bore no just and reasonable relation to the use, regulation or administration of the highways.

It was such an objectionable statute as was held unconstitutional in *Interstate Transit v. Lindsey, supra.* There,

the court, after a careful analysis of the terms and objects of the act, held that there was no sufficient relation between the measure employed and the extent or manner of use, to justify holding that the tax was a charge made merely as compensation for the use of the highways. The act was therefore held unconstitutional, upon that ground, the court expressly stating that it was unnecessary for such reason even to measure the validity of the tax by the other two requirements we have referred to. The court said, "We need not therefore consider whether the tax exacted from this appellant is unreasonably large or unjustly discriminatory."

In *Buck v. Kuykendall,* 267 U. S. 307, the Court again declared a "use of highways" tax unconstitutional, for similar reasons, the Court saying:

> "It may be assumed that section 4 of the state statute is consistent with the 14th Amendment; and also, that appropriate state regulations, adopted primarily to promote safety upon the highways and conservation in their use, are not obnoxious to the commerce clause, where the indirect burden imposed upon interstate commerce is not unreasonable. (Citing a case.) *The provision here in question is of a different character.* Its primary purpose is not regulation with a view to safety or to conservation of the highways, but the *prohibition of competition.* It determines not the manner of use, but the persons by whom the highways may be used. *It prohibits such use to some persons while permitting it to others for the same purpose and in the same manner."* (Italics added.)

While it is only necessary, in order to hold the tax invalid where applied to interstate commerce, that it fail to measure up to any one of the requirements above treated, it should be kept in mind that the District Court in the instant case held the California Caravan Act unconstitutional for *failure to comply with any one of them.* Under the holding of the trial court, not only did the said act fail to bear any reasonable relation to the alleged objects thereof, with respect to highway purposes, but the said Act unfairly discriminated against appellee's interstate commerce in several respects, and, by definite finding, the fee was held unreasonably large and excessive in amount.

By reason of the foregoing cases, it is plain that the Caravan Act is an unconstitutional burden on appellee's interstate commerce. The cases are equally well settled which forbid states to unreasonably burden, tax, hinder, or discriminate in any manner against interstate commerce.

A state may not lay a tax upon the privilege of engaging in interstate commerce.

The above rule is accurately expressed in the case of *Cooney v. Mountain States Tel. & Tel. Co.,* 294 U. S. 384, 392, as follows:

> "But a state cannot tax interstate commerce, it cannot lay a tax upon the business which constitutes such commerce or the privilege of engaging in it."

By virtue of the above cases and many others of similar import, the Caravan Act cannot be sustained as an occupation tax upon appellee's right to engage in an inter-

state business, although some of the comments in appellants' brief would lead to the conclusion that they attempt to justify it on such a basis.

> "Thus, the States cannot tax interstate commerce, either by laying a tax upon the business which constitutes such commerce or the privilege of engaging in it, or upon the receipts, as such, derived from it. Similarly, the States may not tax property in transit in interstate commerce."
>
> *Minnesota v. Blasius,* 290 U. S. 1, 9.

To the same effect, see:

Sprout v. South Bend, supra;

West v. Kansas Natural Gas Co., 221 U. S. 229;

Voight v. Wright, 141 U. S. 62;

Welton v. Missouri, 91 U. S. 275;

I. M. Darnell & Son Co. v. Memphis, 208 U. S. 113;

Walling v. Michigan, 116 U. S. 446;

Webber v. Virginia, 103 U. S. 344.

Neither the police power nor the taxing power may be so used as to violate the rights of those engaged in interstate commerce.

As stated by Mr. Justice Cardozo in *Baldwin v. Selig,* 294 U. S. 511:

> "Neither the power to tax nor the police power may be used by the state of destination with the aim and effect of establishing an economic barrier against com-

petition with the products of another state or the labor of its residents. Restrictions so contrived are an unreasonable clog on the mobility of commerce. They set up what is equivalent to a rampart of customs duties designed to neutralize advantages belonging to the place of origin. They are thus hostile in conception as well as burdensome in result."

The court further said:

"The importer must be free from imposts framed for the very purpose of suppressing competition from without and leading inescapably to the suppression so intended."

See, also:

Real Silk Hosiery Mills v. Portland, 268 U. S. 325;

Minnesota v. Barber, 136 U. S. 313;

Brimmer v. Rebman, 138 U. S. 78;

Sonneborn Bros. v. Keeling, 262 U. S. 506.

By reason of the several unreasonable discriminations against appellee which we have heretofore shown to exist, the enforcement of the Caravan Act has resulted in denying to the appellee the equal protection of the laws, and by the exercise of an invalid taxing power, in depriving him of his property without due process of law. The decisions of this Honorable Court by which it has construed the meaning and application of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution are adverted to at this place. By a lengthy line of decisions, the rule has been established that the equal

protection of the laws means subjection to equal laws, applying alike to all in the same situation, and that,

> "While reasonable classification is permitted, without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed; and classification cannot be arbitrarily made without any substantial basis. Arbitrary selection, it has been said, cannot be justified by calling it classification."

Southern Ry. Co. v. Greene, 216 U. S. 400; 417.

On the same point, we respectfully cite the following:

Bowman v. Lewis, 101 U. S. 22;

Gulf, Colorado & Santa Fe Ry. v. Ellis, 165 U. S. 150;

Connolly v. Union Sewer Pipe Co., 184 U. S. 540;

Power Mfg. Co. v. Saunders, 274 U. S. 490.

The police power of the state is subordinate to, and must be so exercised as not to violate the equal protection clause.

Atchison, Topeka & Santa Fe Ry. Co. v. Vosburg, 238 U. S. 56.

A consideration of the Caravan Act in the light of the decisions of this Honorable Court supports the contention of appellee that the enforcement of the said Act against him results in the violation of his rights under each of the mentioned divisions of the Federal Constitution.

Conclusion.

The appellee in this case faces a very grave situation. We respectfully ask this Court to save to him his rights under the Constitution of the United States.

Respectfully submitted,

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Attorneys for Appellees.

APPENDIX A.

Stipulation.

It is hereby stipulated by and between Appellants and Appellees through their respective counsel that by virtue of an error in making up the Record for this Court the following was omitted; that at the hearing before the trial court Appellee's counsel commenced proof of the facts alleged in paragraphs VII and VIII of Appellee's Bill; as appears in the reporter's transcript of said proceedings beginning at line 25, page 103 in words and figures as follows:

"By Mr. Pierson:

"You had occasion, did you, Mr. Morf, on or about the 19th day of September, 1935, to drive a certain 1935 Dodge Sedan motor vehicle which you had purchased in the City of Shreveport—

"Judge Stephens: (Interrupting) I don't believe those facts are denied, are they?

"Mr. Richards: We admit those.

"Mr. Pierson: Do I understand that under your theory they are admitted?

"Judge Stephens: He says so now. The gentleman who is on the stand, the plaintiff, is in that business, and he is transporting cars in that way."

It is therefore stipulated:

That the foregoing may be included in the record on appeal.

Dated this 18th day of January, 1937.

PIERSON & BLOCK,

By RALPH K. PIERSON,

Attorneys for Appellees.

U. S. WEBB, Attorney General of the State of California,

FRANK RICHARDS,

By FRANK RICHARDS,

Deputy Attorney General,

Attorneys for Appellants.

APPENDIX B.

Caravan Act.

[Chapter 402, Statutes of 1935.]

SECTION 1. The term "caravaning" as used in this act shall mean the transportation from without the State of any motor vehicle operated on its own wheels, or in tow of another motor vehicle, for the purpose of selling or offering the same for sale to or by any agent, dealer, manufacturers' representative, purchaser or prospective purchaser, whether such agent, dealer, manufacturers' representative, purchaser or prospective purchaser may be located within or without this State. The caravaning of motor vehicles as herein defined shall be considered as the transportation of property for hire by motor vehicle and shall be subject to all the laws of this State relative to the transportation of property for hire by motor vehicle upon the public highways of this State.

SEC. 2. No person, firm or corporation shall use any highway in this State for caravaning motor vehicles unless and until there shall first have been secured from the Motor Vehicle Department of the State of California a special permit as to each vehicle so caravaned, for use of the highways of this State in caravaning such vehicle, which permit shall be displayed by posting the same upon the windshield of such vehicle or in other prominent place thereon where it may be readily legible. It shall be unlawful to operate three or more vehicles or groups of vehicles in caravan unless a space of at least one hundred

fifty feet shall at all times be maintained between each vehicle or group of vehicles being so caravaned.

SEC. 3. As a condition precedent to the issuance of any special permit provided for in the previous section of this act the Motor Vehicle Department of the State of California shall charge and collect a fee of fifteen dollars for each motor vehicle for which a caravan permit may be issued, whether such vehicle be operated under its own power or in tow of another motor vehicle; provided, however, that no such permit shall be issued by said Motor Vehicle Department unless and until the applicant therefor shall have produced evidence to the satisfaction of said Motor Vehicle Department that all of the laws of this State relating to the transportation of property upon the public highways therefor for hire shall have been complied with.

SEC. 4. No permit issued under this act for caravaning motor vehicles or vehicles shall be transferable either as between persons or as to the vehicle for which it is issued, and shall only be valid for the trip or trips to be specified in said permit, and in no event shall such permit be valid for a period of more than ninety days after it shall have been issued. Such permit shall contain such information and be in such form and shall be issued under such rules and regulations as may be prescribed by said Motor Vehicle Department. Such permit shall be conditioned upon the permittee complying with all laws of the State of California and the United States.

SEC. 5. The fee paid for any caravaning permit issued under this act shall be in lieu of all other registration fees and license fees for the use of public highways in this State by motor vehicle during the period that such motor vehicle may be operated under and in accordance with such permit upon the public highways in this State; provided, however, that nothing in this section shall exempt the owner or operator of such vehicle from compliance, except with respect to fees or license charges, with all laws of this State now or hereafter adopted, relating to the transportation of property for hire.

SEC. 6. All fees from the issuance of permits collected by the Motor Vehicle Department under this act shall be paid into the general fund in the State treasury.

Said department shall file with the Controller on or before February first and August first of each year a detailed account of the receipts of said Department from this source for the six months next preceding. The moneys so derived by the State are intended to reimburse the State treasury for the added expense which the State may incur in the administration and enforcement of this act and the added expense of policing the highways over which such caravaning may be conducted, so as to provide for the safety of traffic on such highways where caravaning is being conducted.

SEC. 7. Violation of the provisions of section 2 or of section 4 of this act is a misdemeanor punishable by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

APPENDIX C.

Parts of the "Vehicle Code" of California.

[Chapter 27, Statutes of 1935.]

140. Misdemeanor to Violate Registration Requirements. It is a misdemeanor for any person to drive or move, or for an owner knowingly to permit to be driven or moved, upon any highway any vehicle of a type required to be registered hereunder which is not registered or for which the appropriate fee has not been paid as required hereunder, subject to such exceptions as are stated in this code.

142. Exemptions from Registration. The registration provisions of this chapter shall not apply to any of the following vehicles:

(a) Any vehicle of a type otherwise subject to registration hereunder which is driven or moved upon a highway in conformance with the provisions of this code relating to dealers, transporters or nonresidents or under a temporary registration permit issued by the department as authorized by section 147 hereof.

(b) Any vehicle of a type otherwise subject to registration hereunder which is driven or moved upon a highway only for the purpose of crossing such highway from one property to another in accordance with a permit issued by the Department of Public Works.

(c) Any implement of husbandry, whether of a type otherwise subject to registration hereunder or not, which is only incidentally operated or moved over a highway.

(d) Special mobile equipment.

146.5. Notice of Application for Registration of Vehicle Previously Registered Outside This State. The department shall forthwith mail a notice of the filing of any application for registration of a vehicle previously registered outside this State to the governmental officer, agency, or authority which made the last registration of such vehicle outside this State. Such notice must contain like data as required on the application filed with the department. No vehicle previously registered outside this State shall be registered in this State nor shall the department issue any certificate of ownership, registration card, nor license plate or plates hereunder therefor prior to the expiration of ninety days from the day on which the application for registration thereof hereunder is filed with said department, but the foregoing limitations in this sentence shall not apply to commercial vehicles operating in interstate transportation nor affect the right of the department to grant temporary permits under section 147.

151. Procedure Upon Registration. The department upon registering a vehicle shall issue a certificate of ownership to the legal owner and a registration card to the owner, or both to the owner if there is no legal owner of the vehicle.

156. License Plates to Be Furnished by the Department. (a) The department upon registering a vehicle shall issue to the owner two license plates for a motor vehicle other than a motorcycle, and one license plate for all other vehicles required to be registered hereunder.

(b) Every license plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, together with the word "California" or the

abbreviation "Cal." and the year number for which it is issued.

(c) License plates issued for motor vehicles other than motorcycles shall be rectangular in shape, thirteen and seven-eighths inches in length and six and one-eighth inches in width.

180.5. Restriction on Transfer of Vehicle Previously Registered Outside This State. Neither the title to nor any interest in any vehicle previously registered outside this State shall be transferred within this State by any person, whether dealer, manufacturer, or private individual, unless such vehicle is then registered in this State under the provisions of this code.

210. Nonresident Owner Exempt from Registration. (a) A nonresident owner of a foreign vehicle of a type otherwise subject to registration hereunder may operate or permit the operation of such vehicle within this State without registering such vehicle in, or paying any fees to, this State, subject to the following conditions:

(1) That such vehicle at all times when operated in this State is duly registered in, and displays upon it a valid plate or plates issued for such vehicle in the place of residence of such owner.

(2) That such owner obtain and duly display on such vehicle a nonresident permit or its equivalent as hereinafter provided.

(b) The provisions of this section shall not apply to a nonresident owner of a foreign vehicle operated or used within this State for the purposes mentioned in section 215 or section 216 hereof.

215. Registration of Foreign Vehicle Used Commercially. A nonresident owner of a foreign vehicle of a type subject to registration hereunder which is used within this State for the transportation of persons or property for compensation or profit shall register such vehicle as provided in Chapter 1 of this division and the same fees shall be collected as upon the registration of a like vehicle owned by a resident of this State.

216. Nonresidents Conducting Business in This State. Every nonresident, including any foreign corporation, carrying on business within this State and owning and regularly operating in such business any vehicle of a type subject to registration hereunder shall register each such vehicle and pay the same fees therefor as is required with reference to like vehicles owned by residents of this State.

230. Misdemeanors to Violate Registration Laws. In addition to any other offenses relating to registration declared in this code it is a misdemeanor punishable as provided in this code for any person to violate any of the provisions of this division.

237. Operation of Vehicles Without Evidences of Registration. No person shall operate, nor shall an owner knowingly permit to be operated, upon any highway any vehicle required to be registered hereunder unless there shall be attached thereto and displayed thereon when and as required by this code a valid registration card and license plate or plates issued therefor by the department for the current registration year or in lieu thereof a valid permit when and as required in this code.

250. Unlawful to Drive Unless Licensed. (a) It is a misdemeanor for any person to drive a motor vehicle

upon a highway unless he then holds a valid operator's or chauffeur's license issued hereunder, except such persons as are expressly exempted under this act.

(b) It is a misdemeanor for any person to drive a motor vehicle upon a highway as a chauffeur unless he then holds a chauffeur's license duly issued hereunder, except such persons as are expressly exempted under this code.

252. When Nonresident Exempt. (a) A nonresident over the age of twenty-one years having in his immediate possession a valid operator's license issued to him in his home State or country may operate a motor vehicle in this State as an operator only for not to exceed one year without obtaining a license hereunder.

(b) A nonresident over the age of twenty-one years having in his immediate possession a valid chauffeur's license issued to him in his home State or country may operate a motor vehicle in this State without obtaining a license hereunder, but such non-resident must be licensed as a chauffeur under this code before accepting employment as a chauffeur from a resident of this State.

(c) A nonresident over the age of twenty-one years whose home State or country does not require the licensing of operators or chauffeurs may operate a foreign vehicle owned by him for not to exceed thirty days upon display of a valid nonresident permit issued under the provisions of this code without obtaining a license hereunder.

370. Registration Fees. A registration fee of three dollars shall be paid to the department for the registration of every vehicle of a type subject to registration, except for such thereof as are expressly exempted under this code from the payment of registration fees.

371.5. Additional Registration Fee for Vehicle Previously Registered Outside This State. In addition to the registration fee specified in section 370 and any weight fee, there shall be paid a registration fee of three dollars for the original registration within this State of every vehicle previously registered outside this State.

377. Fees for Transfer of Registration. Upon application for the transfer of the title or any interest of an owner or legal owner in or to a vehicle registered hereunder, other than upon a transfer to a chattel mortgagee and other than upon a transfer to a transferee not required hereunder to obtain the issuance to him of a new certificate of ownership and registration card, there shall be paid the following fees:

(1) For a transfer by the owner.....$1.00

(2) For a transfer by the legal owner.....$1.00

(3) For a transfer by the owner and legal owner at the same time.....$1.00

770. Disposition by Cities of Certain Fines and Forfeitures. All fines and forfeitures collected from any person charged with a misdemeanor under this code following arrest by an officer employed by a city, shall be paid into the treasury of such city and deposited in a special fund to be known as the "street improvement fund."

771. Disposition of Other Fines and Forfeitures. All fines and forfeitures collected from any person charged with a misdemeanor under this code following arrest by any officer employed by the State or by a county shall be paid into the treasury of such county in which is located the court imposing such fine or forfeiture and all such

money shall be deposited in a special fund to be known as the "special road fund."

776. Report and Deposit of Money. The department shall file daily with the State Controller a report of all money received by the department and at the same time deposit all such money with the State Treasurer, who shall place the same to the credit of "the motor vehicle fund" which fund is hereby created in the State treasury. The department shall also file with the Controller, on or before February 1 and August 1 of each year, a detailed account of the receipts and disbursements of the department for the six months next preceding. Such accounts shall be open to public inspection when filed.

777. Appropriation for Maintenance of Department. There is hereby appropriated out of such motor vehicle fund all moneys received as transfer fees, operator's and chauffeur's license fees and duplicate operators' and chauffeurs' license fees and all fees for the test of headlights, headlight control devices, auxiliary lighting equipment and signal devices, and in addition thereto such portion of the remainder of such motor vehicle fund not exceeding in any registration year thirty-five per cent thereof as may be necessary for the maintenance of the department to be expended by the department in carrying out the provisions of this code and in enforcing any other laws regulating the operation of vehicles or the use of the highways. All salaries and expenses of the department shall be paid from such appropriation. There shall be deducted from the sums which the department is allowed to expend hereunder such amount as may be allowed to said department in each calendar year under budget appropriation. The department may draw, with-

out at the time furnishing vouchers and itemized statements, sums not to exceed in the aggregate one hundred thousand dollars, said sums so drawn to be used as a revolving fund where cash advances are necessary. At the close of each fiscal year the moneys so drawn must be accounted for and substantiated by vouchers and itemized statements submitted to and audited by the Department of Finance and by the State Controller.

778. Balance of Motor Vehicle Fund Known as "Net Receipts." The balance of the motor vehicle fund after the expenditure of so much thereof as may be permitted by this code for the maintenance and support of the department shall be known as the "net receipts" and shall be devoted to the purposes, and used in the manner, hereinafter provided.

779. Apportionment to Counties. (a) One-half of such net receipts from the motor vehicle fund is hereby appropriated and shall be paid to the counties of this State and the State Controller shall in the months of February and August of each year draw his warrants upon said net receipts in favor of the county treasurer of each county for the amount to which each said county is entitled hereunder. Said payments shall be made to the counties in proportion to the number of vehicles registered in such counties as determined by the places of residence of the owners to whom the registration cards are issued.

(b) In the event the actual domicile, residence or place of abode of an owner of any vehicle registered hereunder is in a county other than the county which the owner has

designated as his place of residence in his application for registration and as shown by the records of the department, then the county auditor of the county receiving such funds from the State as hereinabove provided may draw his warrant in favor of the county wherein is located the actual domicile, residence or place of abode of such owner. Such warrant when so drawn shall be in such total sum as to cover all such vehicles as may properly be attributed to the latter county hereunder in order to secure payment to each county of sums in proportion to registration of vehicles therein according to the actual residences of the owners thereof.

780. No Payments to Counties Until Road Fund Established and Reports Made. The State Controller shall not draw his warrant upon the motor vehicle fund in favor of the county treasurer of any county which has not established a road fund as required by law, or which has failed, neglected or refused to file the report required by law showing the amount of money theretofore received by such county from the motor vehicle fund and the disposition thereof until such county has established such road fund and until such county has made all reports required by law.

781. Remainder of Motor Vehicle Net Receipts Deposited in the State Highway Fund. All moneys remaining in the net receipts in the motor vehicle fund after the expenditures hereinbefore authorized, shall be paid into a fund to be known as the "State highway fund," to be expended in accordance with law.

APPENDIX D.

Parts of "Vehicle License Fee Act" of California.

[Chapter 362, Statutes of 1935.]

SEC. 2. A license fee is hereby imposed for the privilege of operating in this State any vehicle. The annual amount of such license fee shall be a sum equal to one and three-quarters per cent of the actual market value of such vehicle, as determined by the department. The department annually shall compile and publish a list showing the market values as determined by it of each class of vehicle subject to the license fee hereby imposed, such vehicles being classified by make, type and year of manufacture. The license fee imposed by this act shall not apply to any vehicle not subject to registration under the Vehicle Code, nor to any vehicle owned by the State, any political subdivision of the State, or any city, city and county, county, district or public corporation.

SEC. 5. The license fee imposed under this act is in addition to any and all licenses and taxes otherwise imposed, except that no tax according to value shall hereafter be levied or imposed upon any vehicle upon which is paid the license fee required by this act. Such vehicles are hereby exempted from all taxes, State, county or municipal, according to value levied for State or local purposes.

SEC. 6. Whenever any vehicle is operated upon any highway of this State without the license fee having first been paid as required by this act, such fee is delinquent. If such fee is not paid within thirty days after the same becomes delinquent, a penalty equal to such fee shall be added thereto and be collected therewith.

Every license fee and any penalty added thereto, from the date the same becomes due, constitute a lien upon the vehicle for which due.

The department shall collect such fee and any penalty by seizure of such vehicle from the person or persons in possession thereof, if any, and by the sale of such vehicle. The seizure and sale herein authorized shall be conducted and carried out by the department in the same manner as is provided by law for the seizure and sale of personal property by county assessors for the collection of taxes due on personal property. In the event, however, that the records of the department indicate that the registered owner of a vehicle so seized is not the legal owner thereof, as those terms are defined by the Vehicle Code, the department shall, before selling such vehicle, give notice to the legal owner of such vehicle by registered mail addressed to the last known address of such legal owner as shown by the records of the department, at least ten days prior to such proposed sale.

SEC. 7. The duty of collecting the license fee imposed by this act and enforcing the provisions hereof is hereby imposed upon the department. The department shall give to each person paying such license fee a receipt therefor which shall sufficiently designate and identify the vehicle upon which such fee is paid.

SEC. 8. The director of the department shall appoint and fix the salaries of such employees as may be necessary to administer and enforce the provisions of this act.

SEC. 9. All moneys collected by the Department of Motor Vehicles under the terms of this act shall be reported daily to the State Controller and at the same time deposited in the State treasury to the credit of the motor vehicle license fee fund, which fund is hereby created. The moneys in said fund are hereby appropriated as follows:

(a) One per cent, or so much thereof as may be necessary for the use of the Department of Motor Vehicles in the enforcement of the provisions of this act.

(b) Of the remainder of the moneys paid into said fund during the eighty-seventh and eighty-eighth fiscal years, twenty-five per cent thereof shall be paid quarterly to the cities and cities and counties of this State in the proportion that the total population of each such city or city and county bears to the total population of all cities and cities and counties in this State, as certified by the department. For the purpose of this subsection, the population of each city or city and county is that determined by the last Federal census. In the case of a city incorporated subsequent to the last census, or in the case of an unincorporated territory being annexed to a city subsequent to the last census, the department shall ascertain the population of the city or the annexed territory by multiplying the number of registered electors therein by three. The moneys so paid shall be expended by the cities and cities and counties for law enforcement and the regulation and control and fire protection of highway traffic.

(c) Twelve and one-half per cent of said remainder of such moneys shall be paid quarterly during the eighty-seventh and eighty-eighth fiscal years to the counties and cities and counties of the State in the proportion that the population of each such county or city and county bears to the total population of all the counties and cities and counties of the State, as certified by the department. For the purpose of this subsection, the population of each county or city and county is that determined by the last Federal census.

(d) The balance of the moneys in said fund shall on order of the Controller be transferred to the general fund of the State. Out of such moneys so transferred there shall be set apart sufficient moneys in the amount of the principal and interest paid or necessarily to be paid during the eighty-seventh and eighty-eighth fiscal years on the bonds of the State issued under:

(a) The "State Highways Act," approved by the Governor March 22, 1909, and by a majority of the electors at the general election held November 8, 1910;

(b) The "State Highways Act of 1915," approved by the Governor May 20, 1915, and by a majority of the electors at the general election held November 7, 1916;

(c) Section 2 of Article XVI of the Constitution as approved by a majority of the electors at a special election held July 1, 1919; and

(d) Section 3 of Article XVI of the Constitution, as approved by a majority of the electors at the general election held November 2, 1920.

APPENDIX E.

Parts of "Streets and Highways Code" of California.

[Chapter 29, Statutes of 1935]

ARTICLE 5. FUNDS FOR HIGHWAY PURPOSES.
Sections 180-204.

Section 180. State Highway General Fund. The State highway general fund in the State treasury is continued in existence. Any moneys contributed by any county, city, public corporation, district or person may be placed by the commission in the State highway general fund, and shall be expended for the purpose for which contributed. In case the entire sum contributed is not necessary for such purpose, the balance unused shall be returned to the contributor and may be withdrawn in the manner provided by law upon demands made by the Division of Highways.

Section 182. State Highway Fund. The "State highway fund" in the State treasury is continued in existence. The State highway fund is the successor to the State highway maintenance fund and the State highway construction fund, and any appropriation made from the State highway fund, the State highway maintenance fund or the State highway construction fund before the effective date of this code shall continue to be available for the purposes for which it was made.

Section 183. Deposit of money in fund. Appropriation. With the exception of money authorized by law to be deposited in the State highway general fund, all money available for the acquisition of real property or interest therein for State highways, or for the construction, main-

tenance or improvement of State highways or highways in State parks shall be deposited in the State highway fund. The moneys in said fund are appropriated and shall be allocated and expended for the purposes and in the manner provided in this code.

Section 186. General administration and maintenance. For general administration and for maintenance, the department and the commission shall be limited in expenditures, out of the money available each year in the State highway fund, to an amount not exceeding the net revenue derived from one cent per gallon tax on motor vehicle fuel. Of that amount the department shall expend such proportions as the commission determines is necessary for each of the following:

(a) General administration purposes.

(b) Maintenance of all State highways, including all traversable highways between the termini of and approximately on authorized State highway routes.

(c) Maintenance of highways in State parks.

Section 187. County groups. For the purpose of allocating State funds available for highway purposes the counties of the State are placed in these two groups:

Group No. 1. All those counties not included in group No. 2.

Group No. 2. The counties of San Luis Obispo, Kern, Mono, Tulare, Inyo, Santa Barbara, Ventura, Los Angeles, San Bernardino, Orange, Riverside, San Diego and Imperial.

Section 188. Allocation to primary and secondary State highways. Subject to the provision hereinafter contained in this article, all money in the State highway fund not expended for general administration purposes or for maintenance or for the purpose specified in Section 194, shall be allocated and expended as follows:

(a) One-half such money shall be allocated to and expended upon primary State highways. The annual expenditures thereof shall be made within each county group enumerated in Section 187 in amounts which shall bear the same proportion to the total amount available for primary State highway during the current year as the number of miles of primary State highways within each such group bears to the total number of miles of primary State highways in the State.

(b) The remaining one-half shall be allocated to and expended upon the secondary State highways. One-half of such expenditures shall be made in each county group enumerated in Section 187. Not more than four per cent of the money allocated to the secondary State highways in a particular group may be used as State aid to joint highway districts within such group in accordance with the laws pertaining to the financing of highways within joint highway districts.

Section 191. Expenditures from State highway fund. As a further flexible provision with respect to the expenditure of money allocated to primary and secondary State highways from the State highway fund, the department in constructing, improving or maintaining highways

within cities within a particular county group may, on the authorization of the commission, expend for such purposes money allocated to either the primary or secondary State highways in such county group.

Section 193. Purposes authorized for expenditure. The State highway fund money allocated and available each year for primary and secondary State highways, respectively, shall be expended by the department:

(a) On the locations determined by the commission to acquire the necessary real property or interests therein for, and to construct or improve to standards justified by traffic requirements, the primary and secondary State highways, respectively, in the State highway system.

(b) To construct or improve highways in State parks in the manner provided by law.

Section 194. Expenditures within cities. The commission shall allocate annually, and the department shall expend or cause to be expended within the cities of this State, from the State highway fund, an amount equal to the net revenue derived from one-quarter cent per gallon of tax on motor vehicle fuel.

Such expenditures shall be made within each city in the proportion that the total population of such city bears to the total population of all cities in this State. For the purpose of this section the population in each city is that determined by the last preceding Federal census. * * *.

Section 195. Expenditures on streets of major importance other than State highways. Except as provided in Section 200, all moneys allocated under the provisions

of Section 194 shall be expended for the acquisition of real property or interests therein for, or the construction, maintenance, or improvement of streets of major importance within such city, other than State highways, as are agreed upon by the department and the legislative body of the city.

Such expenditures shall be limited to that portion of the street available for use by vehicular traffic except that such funds may be expended for pedestrian underpasses or pedestrian overhead crossings and the installation and maintenance of traffic control devices, but such funds shall not be expended for street lighting, or for the construction or maintenance of sidewalks, or, except as hereinbefore expressly authorized, for the construction or maintenance of any structure or facility in, over, or under the street which is not of direct and primary service in providing a way for vehicular traffic. Sidewalks may be constructed with such funds to replace those removed or damaged by construction or improvement of the street.

Section 196. Delegation of expenditure. "Special gas tax street improvement fund." Any expenditure of money from the State highway fund, as provided in Section 194, shall be delegated by the department to the governing body of such city if the department is satisfied that such city is equipped to conduct the particular work to be delegated in an efficient and economic manner and if the city has set up by ordinance a "Special gas tax street improvement fund."

No moneys shall be expended by the city from such fund except for items specified in the budget and approved by the department as required in this article.

In making any such delegated expenditure a city shall follow the law governing it in regard to the doing of the particular type of work in cases which are not exclusively municipal affairs.

State employees not liable. No state officer or employee shall be liable for anything done, or omitted to be done, by any city in the performance of any delegated work.

Section 197. Annual budget submitted by city. It shall be the duty of the legislative body of each city, on or before the first day of June of each year, to prepare and to submit to the department a budget on such forms as the department may specify, showing the estimated expenditure of such funds recommended to be made during the ensuing fiscal year.

Disapproval by department. The department may refuse to approve any such budget or any item thereof if in the opinion of the department the work proposed to be done or the expenditures proposed to be made, as outlined therein, do not comply with the requirements of this article as to the purposes for which such funds may be expended. The department may also refuse to approve any such budget or any item thereof if in the opinion of the department the proposed expenditure or expenditures are excessive for the work to be done, or if in the opinion of the department adequate provision has not been made in such budget to serve traffic on streets on which any previous expenditure of funds allocated under section 194 has been made, other than such expenditures previously made for maintenance.

Section 198. Quarterly payments to cities. The department shall pay quarterly, as revenues are received

in the State highway fund, to each city to which any expenditure has been delegated, that proportion of its pro-rata share which has been delegated, unless a different schedule of payment is agreed upon between the city and the department. All payments received by a city shall be deposited in its "Special gas tax street improvement fund."

Reductions authorized. In the event that any sums are taken or borrowed from the State highway fund or from the motor vehicle fuel fund, to augment the State general fund, or to pay any appropriations made from the State general fund, the department is authorized to reduce the amounts expended in each proportionately to the reduction in the State highway fund, such reduction to be made up when and if the State highway fund is reimbursed from the State general fund.

Section 199. Approval of plans, etc. Bids and awards of contracts. Before expending any such funds for construction, or improvement of any street except for preliminary engineering, the city shall furnish to the department for approval such surveys, plans, specifications, and estimates of cost therefor as the department may require. When the department has approved the plans, specifications, and estimates, the city may proceed to advertise for bids. The written consent of the department must be secured before any contract may be awarded for an amount in excess of the estimates of cost, or to other than the low bidder on the grounds that the low bidder is not responsible, or before the work may be done by day's labor.

Consent to exceed budget. The written consent of the department must likewise be obtained before the amount

of any item specified in the budget for maintenance or acquisition of real property is exceeded.

Section 200. Accumulation. Expenditure on other highways. To permit the accomplishment of a major project in its entirety, the governing body of a city may authorize the accumulation of money accruing over a period of years from the State highway fund. The legislative body of a city may include in its budget and the department may approve projects for the expenditure of any money accruing to the city under the provisions of this article upon any State or county highway or other major traffic street, including those outside the limits of such city.

Section 201. Maintenance expenditure report. Each city to which an expenditure or expenditures was delegated shall file with the department annually at such time as the department may designate a report showing all expenditures made for maintenance in such detail as the department may require.

Completed project report. Within sixty days after the completion by any city of a delegated project for the acquisition of real property for, or for the construction or improvement of, any street, such city shall file with the department a final report in respect thereto, in such detail as the department may require.

Section 202. Delegation: Street work to department. Any city may contract with the department for the performance by the department of any or all street work in

such city and for such purpose may transfer to the department, for deposit in the State treasury, any moneys available for expenditure by such city for street purposes.

Same: Maintenance to county. Any city may with the approval of the department contract with the county within which such city is located, for the performance by such county of maintenance projects within such city, which projects have been approved by the department.

Section 203. Expenditures on State highways in cities. The commission shall allocate and the department shall expend, or cause to be expended, from the moneys required to be allocated by section 188, an amount not less than the net revenue derived from one-quarter cent per gallon tax on motor vehicle fuel, on State highways within cities.

Such expenditures shall be made within each city in the proportion that the total population of such city bears to the total population of all cities in this State. The population of each city shall be determined as provided in section 194.

Delegation to city. Any expenditure of moneys allocated under this section may be delegated by the department to the city, in the discretion of the department, and on such terms as may be agreed upon by the department and the city.

Guarantee. Purposes. The provisions of this section guarantee and require the expenditure of not less than the amount specified herein but shall not be deemed to pre-

vent the expenditure by the department of a larger amount on the State highways within the cities of this State. The expenditures required by this section shall be made first by the acquisition of real property, or interests therein, for, or the construction, improvement, or maintenance of State highways within cities.

Expenditure of surplus amount. In the event that the department determines that the amount of money available under this section for expenditure in any city is greater than is necessary to adequately maintain and improve to adequate standard all State highways within such city then any surplus amount available for expenditure therein under this section shall be expended for the acquisition of real property or interests therein, for, or the construction, maintenance, or improvement of streets of major importance within such city, other than the State highways and such expenditure shall be made in the same manner and for the same purpose as the expenditure of any money allocated to a city under section 194.

APPENDIX F.

Parts of the "Motor Fuel License Act" of California.

[Statutes, 1933, p. 571, as amended.]

§3. *License tax on distributors.* A license tax is hereby imposed for the privilege of distributing, within the meaning of section 7 of this act, any motor vehicle fuel. Said license tax shall be according to or measured by the gallonage of motor vehicle fuel so distributed in this State and shall be at the rate of three cents for each gallon of such fuel refined, manufactured, produced blended or compounded by such distributor in this State and so distributed by him in this State, or imported by such distributor into and so distributed by him in this State otherwise than in the original package or container in which such motor vehicle fuel was imported into this State, and for each gallon of motor vehicle fuel imported into this State and thereafter acquired by such distributor in the original package or container in which the same was imported and thereafter so distributed by such distributor otherwise than in the original package or container in which the same was imported into this State.

Deductions. From any amount found to be due upon any report hereunder the distributor shall first be allowed to deduct one per cent of the tax otherwise due hereunder to cover subsequent losses occasioned by evaporation and handling.

§13. *Motor vehicle fuel fund: Appropriations.* All money received by the State Controller in payment of license taxes under the provisions of this act shall be by him deposited in the State treasury and credited to the "Motor vehicle fuel fund," which fund is hereby created.

The moneys in said fund are hereby appropriated, subject to the provisions of any budget bill heretofore or hereafter enacted and section 661 of the Political Code, as follows:

(a) To pay the refunds authorized in this act.

(b) To the State Controller, to carry out any duties imposed upon him by this act.

(c) To the State Board of Equalization, to carry out any duties imposed upon it by this act, and the duties of said board arising out of the provisions of section 15 of Article XIII of the Constitution and legislation enacted pursuant thereto.

(d) To the counties of the State as hereinafter provided.

(e) To the State highway fund, as hereinafter provided.

(f) To pay the pro rata share of the overhead and general administrative expense of the State Controller and the State Board of Equalization attributable to duties imposed by this act or under the provisions of section 15 of Article XIII of the Constitution, and legislation enacted pursuant thereto. Such pro rata share shall be payable upon presentation of claim against any appropriation from the motor vehicle fuel fund for the support of the State Controller or the State Board of Equalization, as the case may be.

(g) To pay refunds as may be due on account of judgments for the return of license taxes illegally collected, as provided in section 16 of this act.

One-third of all moneys in said "Motor vehicle fuel fund" after the biennial appropriations to the State Controller and the State Board of Equalization have been deducted and the refunds herein provided for shall have been paid, shall be paid to the counties as hereinafter provided.

Apportionment to counties. Out of said appropriation, each county and city and county shall first be paid seven thousand five hundred dollars for each quarter of a year. The balance remaining in said appropriation after making said apportionment of seven thousand five hundred dollars quarterly shall be apportioned to all of the counties and cities and counties of this State in the proportion that the registration of vehicles in each of such counties and cities and counties bears to the total number of vehicles registered in this State.

All such amounts so paid to the several counties shall be paid into a special road improvement fund and expended as provided by law.

In the event that any such county has not established such a road fund, its proportion of such fund shall be retained by the State until provision for such a road fund has been made, and it shall then be paid over to such county.

Payment to counties. In the months of January, April, July and October of each year, the Controller shall ascertain the gross amounts received and the net receipts remaining after deducting the amounts withdrawn for the support of the Controller and the Board of Equalization and the payment of the refunds for which provision is made in section 11 of this act during the preceding three

months, and thereupon the Controller shall draw his warrant upon the "Motor vehicle fuel fund" in favor of each county in the State for the amount to which each such county is entitled. The Controller shall not draw such warrant in favor of any county which shall not have established such a road fund as is herein required or which shall be delinquent in its annual report to the State Department of Public Works as required by law.

Annual report. Whenever the annual report by any board of supervisors shall not have been duly filed in the manner and form provided by law and at or before the time specified by law, the State Controller shall not draw his warrant in favor of the treasurer of such county until such report has been filed.

"State highway fund." All moneys in the "Motor vehicle fuel fund" other than those hereinbefore appropriated, are hereby appropriated to and shall by the State Treasurer be paid into the "State highway fund," which fund is hereby created.

Department of Public Works. All money thus paid into the State highway fund is appropriated to the Department of Public Works to be expended in accordance with law for the payment of all necessary charges incurred in carrying out the provisions of the Streets and Highways Code, and of any other law relating to the acquisition of real property for and the construction, maintenance or improvement of highways.

APPENDIX G.

Parts of the "Highway Carriers' Act" of California.

[Chapter 223, Statutes of 1935 of California.]

§1. *Definitions.* * * *

(f) The term "highway carrier" when used in this act means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever engaged in transportation of property for compensation or hire as a business over any public highway in this State by means of a motor vehicle or motor vehicles. However, it does not include carriers operating exclusively within the limits of a single incorporated city or city and county, nor does it include persons rendering casual transportation services as an accommodation, and not in the usual or ordinary course of business of such person, nor does it include persons hauling their own products.

§3. *Carriers must secure permit. Petition for permit. Issuance of permit.* Except as hereinafter provided, no highway carrier, other than a highway common carrier, shall engage in the business of transportation of property for compensation by motor vehicle on any public highway in this State without first having obtained from the Railroad Commission a permit authorizing such operation; provided, however, that any highway carrier subject to the provisions of this act, who is in business on the effective date of this act, shall file his application with the commission within thirty days after this act shall take effect. Any highway carrier desir-

ing a permit to operate hereunder as a highway carrier other than a highway common carrier, shall file a petition therefor with the Railroad Commission. Such petition shall set forth the name and address of the applicant; the names and addresses of its officers, if any; full information concerning the financial condition and physical properties of applicant; and such other information necessary to the enforcement of this act, as the Railroad Commission may, by order require. Upon compliance with this act a permit must be issued by the commission, but no such permit shall be granted to a foreign corporation. Pending the issuance of any permit by the commission, the continuance of such operation shall be lawful. Any operating permit not exercised for a period of one year shall lapse and terminate.

§5. *Insurance protection required.* The Railroad Commission shall, in granting permits under the provisions of this act, require the highway carrier to procure, and continue in effect during the life of the permit, adequate protection, as required in section 6 hereof, against liability imposed by law upon such highway carrier for the payment of damages for personal bodily injuries (including death resulting therefrom) in the amount of not less than five thousand dollars on account of bodily injuries to, or death of, one person; and protection against a total liability of such highway carrier on account of bodily injuries to, or death of, more than one person, as a result of any one accident, in the amount of not less than ten thousand dollars; and protection in

an amount of not less than five thousand dollars for one accident resulting in damage or destruction of property whether the property of one, or more than one claimant

§6. *Alternative methods of protection.* The protection required under section 5 shall be evidenced by the deposit with the Railroad Commission, covering each vehicle used or to be used under the permit applied for, of a policy of public liability and property damage insurance, issued by a company licensed to write such insurance in the State of California; or of a bond of a surety company licensed to write surety bonds in the State of California; or of a personal bond, with such sureties as the Railroad Commission shall find adequate to guarantee the protection prescribed in section 5 hereof; or it shall be evidenced by a trust fund in the amount of fifteen thousand dollars, to be held in trust by some institution or person acceptable to the Railroad Commission; or by a combination of any of or all of said methods in such manner that the aggregate of the protection or funds available therefor shall equal the principal sum of not less than fifteen thousand dollars, and such highway carrier shall have the option of the method to be used in obtaining such protection, and may change from one method to another, from time to time, with the consent of the Railroad Commission.